

State of Arizona
Senate
Forty-sixth Legislature
First Regular Session
2003

CHAPTER 212

SENATE BILL 1351

AN ACT

AMENDING SECTION 6-246, ARIZONA REVISED STATUTES; REPEALING SECTION 14-1108, ARIZONA REVISED STATUTES; AMENDING SECTIONS 14-1201 AND 14-1403, ARIZONA REVISED STATUTES; AMENDING TITLE 14, CHAPTER 1, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 14-1404 THROUGH 14-1408; AMENDING SECTIONS 14-3703, 14-3913, 14-3933, 14-5417, 14-5419 AND 14-5603, ARIZONA REVISED STATUTES; REPEALING TITLE 14, CHAPTER 7, ARTICLES 2, 2.1, 3, 6 AND 8, ARIZONA REVISED STATUTES; AMENDING TITLE 14, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 10; AMENDING SECTION 46-456, ARIZONA REVISED STATUTES; RELATING TO THE REVISED UNIFORM TRUST CODE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 6-246, Arizona Revised Statutes, is amended to
3 read:

4 6-246. Permitted investments; limitations

5 A. In addition to other investments authorized by law, a bank or trust
6 company that is acting as a fiduciary may invest and reinvest in the
7 securities of an open-end or closed-end management investment company or
8 investment trust that is registered under the investment company act of 1940
9 (15 United States Code section 80A-1), as amended, if the portfolios of that
10 investment company or investment trust consist of investments permitted by
11 the applicable fiduciary instrument. A bank or trust company may invest in
12 these securities notwithstanding that the bank or trust company, or an
13 affiliate of the bank or trust company, provides services to the investment
14 company or investment trust as an investment adviser, custodian, transfer
15 agent, registrar, sponsor, distributor, administrator, manager or otherwise
16 and receives reasonable remuneration for those services.

17 B. A bank or trust company that invests and reinvests in the
18 securities of an open-end or closed-end management investment company or
19 investment trust authorized under subsection A of this section shall disclose
20 in the statement of the fiduciary account to all persons whose funds are
21 invested in the investment company or investment trust that the bank or trust
22 company provides services for and receives fees from the open-end or
23 closed-end management company or investment trust. A PERSON WHO COMPLIES
24 WITH THE REQUIREMENTS OF SECTION 14-10802, SUBSECTION F SATISFIES THE
25 DISCLOSURE REQUIREMENTS OF THIS SUBSECTION.

26 C. A bank may purchase for its own account any class of equity
27 securities issued by a banker's bank, as defined in section 6-204, if the
28 aggregate investment does not exceed ten per cent of the bank's capital.

29 Sec. 2. Repeal

30 Section 14-1108, Arizona Revised Statutes, is repealed.

31 Sec. 3. Section 14-1201, Arizona Revised Statutes, is amended to read:

32 14-1201. Definitions

33 In this title, unless the context otherwise requires:

34 1. "Agent" includes an attorney-in-fact under a durable or nondurable
35 power of attorney, a person who is authorized to make decisions concerning
36 another person's health care and a person who is authorized to make decisions
37 for another person under a natural death act.

38 2. "Application" means a written request to the registrar for an order
39 of informal probate or appointment under chapter 3, article 3 of this title.

40 3. "Beneficiary", as it relates to a trust beneficiary, includes a
41 person who has any present or future interest, vested or contingent, and also
42 includes the owner of an interest by assignment or other transfer. As it
43 relates to a charitable trust, beneficiary includes any person entitled to
44 enforce the trust. As it relates to a beneficiary of a beneficiary
45 designation, beneficiary refers to a beneficiary of an insurance or annuity

1 policy, an account with pay on death designation, a security registered in
2 beneficiary form or a pension, profit sharing, retirement or similar benefit
3 plan, or any other nonprobate transfer at death. As it relates to a
4 beneficiary designated in a governing instrument, beneficiary includes a
5 grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a
6 beneficiary designation, a donee, appointee or taker in default of a power
7 of appointment and a person in whose favor a power of attorney or a power
8 held in any person, fiduciary or representative capacity is exercised.

9 4. "Beneficiary designation" refers to a governing instrument naming
10 a beneficiary of an insurance or annuity policy, of an account with pay on
11 death designation, of a security registered in beneficiary form or of a
12 pension, profit sharing, retirement or similar benefit plan, or any other
13 nonprobate transfer at death.

14 5. "Child" includes a person who is entitled to take as a child under
15 this title by intestate succession from the parent whose relationship is
16 involved. Child excludes a person who is only a stepchild, a foster child,
17 a grandchild or a more remote descendant.

18 6. "Claims", in respect to estates of decedents and protected persons,
19 includes liabilities of the decedent or the protected person, whether arising
20 in contract, in tort or otherwise, and liabilities of the estate that arise
21 at or after the death of the decedent or after the appointment of a
22 conservator, including funeral expenses and expenses of administration.
23 Claims does not include estate or inheritance taxes or demands or disputes
24 regarding title of a decedent or a protected person to specific assets
25 alleged to be included in the estate.

26 7. "Community property" means that property of a husband and wife that
27 is acquired during the marriage and that is community property as prescribed
28 in section 25-211.

29 8. "Conservator" means a person who is appointed by a court to manage
30 the estate of a protected person.

31 9. "Court" means the superior court.

32 10. "Dependent child" means a minor child who the decedent was
33 obligated to support or an adult child who was in fact being supported by the
34 decedent at the time of the decedent's death.

35 11. "Descendant" means all of the decedent's descendants of all
36 generations, with the relationship of parent and child at each generation.

37 12. "Devise", when used as a noun, means a testamentary disposition of
38 real or personal property and, when used as a verb, means to dispose of real
39 or personal property by will.

40 13. "Devisee" means a person designated in a will to receive a
41 devise. For the purposes of chapter 3 of this title, in the case of a devise
42 to an existing trust or trustee, or to a trustee on trust described by will,
43 the trust or trustee is the devisee and the beneficiaries are not devisees.

44 14. "Disability" means cause for a protective order as described in
45 section 14-5401.

1 15. "Distributee" means any person who has received property of a
2 decedent from that person's personal representative other than as a creditor
3 or purchaser. Distributee includes a testamentary trustee only to the extent
4 of distributed assets or increment that remains in that person's hands. A
5 beneficiary of a testamentary trust to whom the trustee has distributed
6 property received from a personal representative is a distributee of the
7 personal representative. For the purposes of this paragraph, "testamentary
8 trustee" includes a trustee to whom assets are transferred by will, to the
9 extent of the devised assets.

10 16. "Estate" includes the property of the decedent, trust or other
11 person whose affairs are subject to this title as originally constituted and
12 as it exists from time to time during administration. As it relates to a
13 spouse, the estate includes only the separate property and the share of the
14 community property belonging to the decedent or person whose affairs are
15 subject to this title.

16 17. "Exempt property" means that property of a decedent's estate that
17 is described in section 14-2403.

18 18. "Fiduciary" includes a personal representative, guardian,
19 conservator and trustee.

20 19. "Foreign personal representative" means a personal representative
21 appointed by another jurisdiction.

22 20. "Formal proceedings" means proceedings conducted before a judge
23 with notice to interested persons.

24 21. "Governing instrument" means a deed, will, trust, insurance or
25 annuity policy, account with pay on death designation, security registered
26 in beneficiary form, pension, profit sharing, retirement or similar benefit
27 plan, instrument creating or exercising a power of appointment or a power of
28 attorney or a dispositive, appointive or nominative instrument of any similar
29 type.

30 22. "Guardian" means a person who has qualified as a guardian of a
31 minor or incapacitated person pursuant to testamentary or court appointment
32 but excludes a person who is merely a guardian ad litem.

33 23. "Heirs", except as controlled by section 14-2711, means persons,
34 including the surviving spouse and the state, who are entitled under the
35 statutes of intestate succession to the property of a decedent.

36 24. "Incapacitated person" has the same meaning as prescribed in
37 section 14-5101.

38 25. "Informal proceedings" means those proceedings conducted without
39 notice to interested persons by an officer of the court acting as a registrar
40 for probate of a will or appointment of a personal representative.

41 26. "Interested person" includes any TRUSTEE, heir, devisee, child,
42 spouse, creditor, beneficiary and other person who has a property right in
43 or claim against a trust estate or the estate of a decedent, ward or
44 protected person. Interested person also includes a person who has priority
45 for appointment as personal representative and other fiduciaries representing

1 interested persons. Interested person, as the term relates to particular
2 persons, may vary from time to time and must be determined according to the
3 particular purposes of, and matter involved in, any proceeding.

4 27. "Issue" of a person means descendant as defined in paragraph 11 of
5 this section.

6 28. "Joint tenants with the right of survivorship" and "community
7 property with the right of survivorship" includes co-owners of property held
8 under circumstances that entitle one or more to the whole of the property on
9 the death of the other or others but excludes forms of co-ownership
10 registration in which the underlying ownership of each party is in proportion
11 to that party's contribution.

12 29. "Lease" includes any oil, gas or other mineral lease.

13 30. "Letters" includes letters testamentary, letters of guardianship,
14 letters of administration and letters of conservatorship.

15 31. "Minor" means a person who is under eighteen years of age.

16 32. "Mortgage" means any conveyance, agreement or arrangement in which
17 property is encumbered or used as security.

18 33. "Nonresident decedent" means a decedent who was domiciled in
19 another jurisdiction at the time of the decedent's death.

20 34. "Organization" means a corporation, business trust, estate, trust,
21 partnership, joint venture, association, government or governmental
22 subdivision or agency or any other legal or commercial entity.

23 35. "Parent" includes any person entitled to take, or who would be
24 entitled to take if the child died without a will, as a parent under this
25 title by intestate succession from the child whose relationship is in
26 question and excludes any person who is only a stepparent, foster parent or
27 grandparent.

28 36. "Payor" means a trustee, insurer, business entity, employer,
29 government, governmental agency or subdivision or any other person who is
30 authorized or obligated by law or a governing instrument to make payments.

31 37. "Person" means a person or an organization.

32 38. "Personal representative" includes executor, administrator,
33 successor personal representative, special administrator and persons who
34 perform substantially the same function under the law governing their status.
35 A general personal representative excludes a special administrator.

36 39. "Petition" means a written request to the court for an order after
37 notice.

38 40. "Proceeding" includes action at law and suit in equity.

39 41. ~~"Property" includes both real and personal property or any interest~~
40 ~~in real and personal property and means anything that may be the subject of~~
41 ~~ownership.~~ HAS THE SAME MEANING PRESCRIBED IN SECTION 14-10103.

42 42. "Protected person" has the same meaning as prescribed in section
43 14-5101.

44 43. "Protective proceeding" has the same meaning as prescribed in
45 section 14-5101.

1 44. "Registrar" means the official of the court designated to perform
2 the functions of registrar as provided in section 14-1307.

3 45. "Security" includes any note, stock, treasury stock, bond,
4 debenture, evidence of indebtedness, certificate of interest or participation
5 in an oil, gas or mining title or lease or in payments out of production
6 under that title or lease, collateral trust certificate, transferable share,
7 OR voting trust certificate and, in general, includes any interest or
8 instrument commonly known as a security, or any certificate of interest or
9 participation, any temporary or interim certificate, receipt or certificate
10 of deposit for, or any warrant or right to subscribe to or purchase, any of
11 these securities.

12 46. "Separate property" means that property of a husband or wife which
13 is his or her separate property as defined in section 25-213.

14 47. "Settlement", in reference to a decedent's estate, includes the
15 full process of administration, distribution and closing.

16 48. "Special administrator" means a personal representative as
17 described by sections 14-3614 through 14-3618.

18 49. ~~"State" means a state, district, territory, possession or~~
19 ~~commonwealth of the United States~~ HAS THE SAME MEANING PRESCRIBED IN SECTION
20 14-10103.

21 50. "Successor personal representative" means a personal
22 representative, other than a special administrator, who is appointed to
23 succeed a previously appointed personal representative.

24 51. "Successors" means persons, other than creditors, who are entitled
25 to property of a decedent under a will or this title.

26 52. "Supervised administration" refers to the proceedings described in
27 chapter 3, article 5 of this title.

28 53. "Survive" means that a person has neither predeceased an event,
29 including the death of another person, nor is deemed to have predeceased an
30 event under section 14-2104 or 14-2702.

31 54. "Testacy proceeding" means a proceeding to establish a will or
32 determine intestacy.

33 55. "Testator" includes a person of either sex.

34 56. "Trust" includes an express trust, private or charitable, with any
35 additions, wherever and however created. Trust also includes a trust created
36 or determined by judgment or decree under which the trust is to be
37 administered in the manner of an express trust. Trust excludes other
38 constructive trusts and excludes resulting trusts, conservatorship, personal
39 representatives, trust accounts, custodial arrangements pursuant to chapter
40 7, article 7 of this title, business trusts providing for certificates to be
41 issued to beneficiaries, common trust funds, voting trusts, security
42 arrangements, liquidation trusts and trusts for the primary purpose of paying
43 debts, dividends, interest, salaries, wages, profits, pensions or employee
44 benefits of any kind and any arrangement under which a person is nominee or
45 escrowee for another.

1 57. "Trustee" includes an original, additional or successor trustee,
2 whether or not appointed or confirmed by court.

3 58. "Ward" has the same meaning as prescribed in section 14-5101.

4 59. "Will" includes A codicil and any testamentary instrument that
5 merely appoints an executor, revokes or revises another will, nominates a
6 guardian or expressly excludes or limits the right of an individual or class
7 to succeed to property of the decedent passing by intestate succession.

8 Sec. 4. Section 14-1403, Arizona Revised Statutes, is amended to read:

9 14-1403. Pleadings

10 In formal proceedings involving trusts or estates of decedents, minors,
11 protected persons or incapacitated persons, and in judicially supervised
12 settlements, the following apply:

13 1. interests to be affected shall MUST be described in pleadings which
14 THAT give reasonable information to owners by name or class, by reference to
15 the instrument creating the interests or in SOME other appropriate manner.

16 2. ~~Persons are bound by orders binding others in the following cases:~~

17 (a) ~~Orders binding the sole holder or all co-holders of a power of~~
18 ~~revocation or a presently exercisable general power of appointment, including~~
19 ~~one in the form of a power of amendment, bind other persons to the extent~~
20 ~~their interests, as objects, takers in default or otherwise, are subject to~~
21 ~~the power.~~

22 (b) ~~To the extent there is no conflict of interest between them or~~
23 ~~among persons represented:~~

24 (i) ~~Orders binding a conservator bind the person whose estate he~~
25 ~~controls.~~

26 (ii) ~~Orders binding a guardian bind the ward if no conservator of his~~
27 ~~estate has been appointed.~~

28 (iii) ~~Orders binding a trustee bind beneficiaries of the trust in~~
29 ~~proceedings to probate a will establishing or adding to a trust, to review~~
30 ~~the acts or accounts of a prior fiduciary and in proceedings involving~~
31 ~~creditors or other third parties.~~

32 (iv) ~~Orders binding a personal representative bind persons interested~~
33 ~~in the undistributed assets of a decedent's estate in actions or proceedings~~
34 ~~by or against the estate. If there is no conflict of interest and no~~
35 ~~conservator or guardian has been appointed, a parent may represent his minor~~
36 ~~child.~~

37 (c) ~~An unborn or unascertained person who is not otherwise represented~~
38 ~~is bound by an order to the extent his interest is adequately represented by~~
39 ~~another party having a substantially identical interest in the proceeding.~~

40 3. ~~Notice is required as follows:~~

41 (a) ~~Notice as prescribed by section 14-1401 shall be given to every~~
42 ~~interested person or to one who can bind an interested person as described~~
43 ~~in paragraph 2, subdivision (a) or (b) of this section. Notice may be given~~
44 ~~both to a person and to another who may bind him.~~

~~(b) Notice is given to unborn or unascertained persons who are not represented under paragraph 2, subdivision (a) or (b) of this section, by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained persons.~~

~~4. At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out its reasons for appointing a guardian ad litem as a part of the record of the proceeding.~~

Sec. 5. Title 14, chapter 1, article 4, Arizona Revised Statutes, is amended by adding sections 14-1404 through 14-1408, to read:

14-1404. Representation; basic effect

A. NOTICE TO A PERSON WHO MAY REPRESENT AND BIND ANOTHER PERSON UNDER THIS ARTICLE HAS THE SAME EFFECT AS IF NOTICE WERE GIVEN DIRECTLY TO THE OTHER PERSON.

B. THE CONSENT OF A PERSON WHO MAY REPRESENT AND BIND ANOTHER PERSON UNDER THIS ARTICLE IS BINDING ON THE PERSON REPRESENTED UNLESS THE PERSON REPRESENTED OBJECTS TO THE REPRESENTATION BEFORE THE CONSENT WOULD OTHERWISE HAVE BECOME EFFECTIVE.

C. EXCEPT AS OTHERWISE PROVIDED IN SECTION 14-10411, SUBSECTION A AND SECTION 14-10602, SUBSECTION E, A PERSON WHO UNDER THIS ARTICLE MAY REPRESENT A SETTLOR WHO LACKS CAPACITY MAY RECEIVE NOTICE AND GIVE A BINDING CONSENT ON THE SETTLOR'S BEHALF. FOR THE PURPOSES OF THIS SUBSECTION, "SETTLOR" HAS THE SAME MEANING PRESCRIBED IN SECTION 14-10103.

D. FOR THE PURPOSES OF THIS SECTION, NOTICE TO A PERSON MUST INCLUDE ANY DOCUMENT REQUIRED TO BE SENT TO A PERSON PURSUANT TO THIS ARTICLE.

14-1405. Representation by holder of general power of appointment

THE HOLDER OF A GENERAL POWER OF APPOINTMENT, INCLUDING A GENERAL TESTAMENTARY POWER OF APPOINTMENT, MAY REPRESENT AND BIND PERSONS WHOSE INTERESTS, AS PERMISSIBLE APPOINTEES, TAKERS IN DEFAULT, OR OTHERWISE, ARE SUBJECT TO THE POWER.

14-1406. Representation by fiduciaries and parents

TO THE EXTENT THERE IS NO CONFLICT OF INTEREST BETWEEN THE REPRESENTATIVE AND THE PERSON REPRESENTED OR AMONG THOSE BEING REPRESENTED WITH RESPECT TO A PARTICULAR QUESTION OR DISPUTE:

1. A CONSERVATOR MAY REPRESENT AND BIND THE ESTATE THAT THE CONSERVATOR CONTROLS.

2. A GUARDIAN MAY REPRESENT AND BIND THE WARD IF A CONSERVATOR OF THE WARD'S ESTATE HAS NOT BEEN APPOINTED.

3. AN AGENT WHO HAS AUTHORITY TO ACT WITH RESPECT TO THE PARTICULAR QUESTION OR DISPUTE MAY REPRESENT AND BIND THE PRINCIPAL.

1 4. A TRUSTEE MAY REPRESENT AND BIND THE BENEFICIARIES OF THE TRUST.

2 5. A PERSONAL REPRESENTATIVE OF A DECEDENT'S ESTATE MAY REPRESENT AND
3 BIND PERSONS INTERESTED IN THE ESTATE.

4 6. A PARENT MAY REPRESENT AND BIND THE PARENT'S MINOR OR UNBORN CHILD
5 IF A CONSERVATOR OR GUARDIAN FOR THE CHILD HAS NOT BEEN APPOINTED.

6 14-1407. Representation by person having substantially
7 identical interest

8 UNLESS OTHERWISE REPRESENTED, A MINOR, INCAPACITATED PERSON, UNBORN
9 CHILD OR PERSON WHOSE IDENTITY OR LOCATION IS UNKNOWN AND NOT REASONABLY
10 ASCERTAINABLE, MAY BE REPRESENTED BY AND BOUND BY ANOTHER PERSON WHO HAS A
11 SUBSTANTIALLY IDENTICAL INTEREST WITH RESPECT TO THE PARTICULAR QUESTION OR
12 DISPUTE, BUT ONLY TO THE EXTENT THERE IS NO CONFLICT OF INTEREST BETWEEN THE
13 REPRESENTATIVE AND THE PERSON REPRESENTED.

14 14-1408. Appointment of representative

15 A. IF THE COURT DETERMINES THAT AN INTEREST IS NOT REPRESENTED UNDER
16 THIS ARTICLE OR THAT THE OTHERWISE AVAILABLE REPRESENTATION MIGHT BE
17 INADEQUATE, THE COURT MAY APPOINT A REPRESENTATIVE TO RECEIVE NOTICE, GIVE
18 CONSENT AND OTHERWISE REPRESENT, BIND AND ACT ON BEHALF OF A MINOR,
19 INCAPACITATED PERSON, UNBORN CHILD OR PERSON WHOSE IDENTITY OR LOCATION IS
20 UNKNOWN. THE COURT MAY APPOINT A REPRESENTATIVE FOR SEVERAL PERSONS OR
21 INTERESTS.

22 B. A REPRESENTATIVE MAY ACT ON BEHALF OF THE PERSON REPRESENTED WITH
23 RESPECT TO ANY MATTER ARISING UNDER THIS TITLE, WHETHER OR NOT A JUDICIAL
24 PROCEEDING CONCERNING THE TRUST OR ESTATE IS PENDING.

25 C. IN MAKING DECISIONS, A REPRESENTATIVE MAY CONSIDER GENERAL BENEFIT
26 ACCRUING TO THE LIVING MEMBERS OF THE FAMILY OF THE PERSON REPRESENTED.

27 Sec. 6. Section 14-3703, Arizona Revised Statutes, is amended to read:

28 14-3703. General duties; relation and liability to persons
29 interested in estate; standing to sue

30 A. A personal representative is a fiduciary who shall observe the
31 standards of care applicable to trustees as described by ~~section 14-7302~~
32 SECTIONS 14-10804 AND 14-10806 and the duties of accounting applicable to
33 trustees as provided in section ~~14-7303~~ 14-10813, SUBSECTION C. A personal
34 representative is under a duty to settle and distribute the estate of the
35 decedent in accordance with the terms of any probated and effective will and
36 this title, and as expeditiously and efficiently as is consistent with the
37 best interests of the estate. The personal representative shall use the
38 authority conferred by this title, the terms of the will, if any, and any
39 order in proceedings to which the personal representative is a party for the
40 best interests of successors to the estate.

41 B. A personal representative shall not be surcharged for acts of
42 administration or distribution if the conduct in question was authorized at
43 the time. Subject to other obligations of administration, an informally
44 probated will is authority to administer and distribute the estate according
45 to its terms. An order of appointment of a personal representative, whether

issued in informal or formal proceedings, is authority to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier testacy proceeding, a formal proceeding questioning the personal representative's appointment or fitness to continue, or a supervised administration proceeding. Nothing in this section affects the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants, the surviving spouse, any minor children, any dependent children and any pretermitted child of the decedent as described elsewhere in this title.

C. Except as to proceedings which THAT do not survive the death of the decedent, a personal representative of a decedent domiciled in this state at death has the same standing to sue and be sued in the courts of this state and the courts of any other jurisdiction as the decedent had immediately prior to death.

Sec. 7. Section 14-3913, Arizona Revised Statutes, is amended to read:

14-3913. Distributions to trustee

A. Before distributing to a trustee, the personal representative may require that the trustee inform the beneficiaries as provided in section ~~14-7303~~ 14-10813, SUBSECTION B, PARAGRAPH 3, and if the state in which it is to be administered provides for registration, that the trust be registered.

B. If the trust instrument does not excuse the trustee from giving bond, the personal representative may petition the appropriate court to require that the trustee post bond if he THE PERSONAL REPRESENTATIVE apprehends that distribution might jeopardize the interests of persons who are not able to protect themselves, and he may withhold distribution until the court has acted.

C. No inference of negligence on the part of the personal representative shall be drawn from his THE PERSONAL REPRESENTATIVE'S failure to exercise the authority conferred by subsections A and B of this section.

Sec. 8. Section 14-3933, Arizona Revised Statutes, is amended to read:

14-3933. Closing estates; statement of personal representative

A. Unless prohibited by order of the court and except for estates being administered in supervised administration proceedings, a personal representative may close an estate by filing with the court no earlier than four months after the date of original appointment of a general personal representative for the estate a verified statement stating that the personal representative, or a previous personal representative has:

1. Determined that the time limit for presentation of creditors' claims has expired.

2. Fully administered the estate of the decedent by making payment, settlement or other disposition of all claims that were presented, expenses of administration and estate, inheritance and other death taxes, except as specified in the statement, and that the assets of the estate have been

distributed to the persons entitled. If any claims remain undischarged, the statement shall state whether the personal representative has distributed the estate subject to possible liability with the agreement of the distributees or it shall state in detail other arrangements which THAT have been made to accommodate outstanding liabilities.

3. Sent a copy of the statement to all distributees of the estate and to all creditors or other claimants of whom the personal representative is aware whose claims are neither paid nor barred and has furnished a full account in writing of the personal representative's administration to the distributees whose interests are affected thereby, ~~including guardians ad litem appointed pursuant to section 14-1403, paragraph 4, conservators and guardians.~~

B. If no proceedings involving the personal representative are pending in the court one year after the closing statement is filed, the appointment of the personal representative terminates.

Sec. 9. Section 14-5417, Arizona Revised Statutes, is amended to read:

14-5417. General duty of conservator

In the ~~exercise of his~~ EXERCISING powers, a conservator is to act as a fiduciary and shall observe the standard of care applicable to trustees as described by ~~section 14-7302~~ SECTIONS 14-10804 AND 14-10806.

Sec. 10. Section 14-5419, Arizona Revised Statutes, is amended to read:

14-5419. Accounts

A. Every conservator must account to the court for the administration of the estate not less than annually on the anniversary date of qualifying as conservator and also on resignation or removal, and on termination of the protected person's minority or disability, except that for good cause shown ~~upon~~ ON the application of an interested person, the court may relieve the conservator of filing annual or other accounts by an order entered in the minutes.

B. The court may take ~~such action as is~~ ANY appropriate ~~upon~~ ACTION ON filing of annual or other accounts. In connection with any account, the court may require a conservator to submit to a physical check of the estate in the conservator's control, to be made in any manner the court may specify.

C. An adjudication allowing an intermediate or final account can be made only ~~upon~~ ON petition, notice and a hearing. Notice must be given to:

1. The protected person.

2. A guardian of the protected person if one has been appointed, unless the same person is serving as both guardian and conservator.

3. If no guardian has been appointed or the same person is serving as both guardian and conservator, a spouse or, if the spouse is the conservator, there ~~be~~ IS no spouse or the spouse is incapacitated, a parent or an adult child who is not serving as a conservator.

4. A ~~guardian ad litem~~ REPRESENTATIVE appointed for the protected person, if the court determines in accordance with section ~~14-1403~~ 14-1408

1 that representation of the interest of the protected person would otherwise
2 be inadequate.

3 D. An order, made upon ON notice and a hearing, allowing an
4 intermediate account of a conservator, adjudicates as to the conservator's
5 liabilities concerning the matters considered in connection therewith. An
6 order, made upon ON notice and a hearing, allowing a final account
7 adjudicates as to all previously unsettled liabilities of the conservator to
8 the protected person or the protected person's successors relating to the
9 conservatorship.

10 E. In any case in which the estate consists, in whole or in part, of
11 benefits paid by the veterans administration to the conservator or the
12 conservator's predecessor for the benefit of the protected person, the
13 veterans administration office which THAT has jurisdiction over the area is
14 entitled to a copy of any account filed under chapter 5, article 4 of this
15 title. Each year in which an account is not filed with the court, the
16 conservator shall, if requested, SHALL submit an account to the appropriate
17 veterans administration office. If such an account is not submitted as
18 requested, or if it is found unsatisfactory by the veterans administration,
19 the court shall, upon ON receipt of notice thereof, SHALL require the
20 conservator forthwith to IMMEDIATELY file an account with the court.

21 Sec. 11. Section 14-5603, Arizona Revised Statutes, is amended to
22 read:

23 14-5603. Deposit of funds; investment plan

24 A. All funds coming into the custody of the public fiduciary shall be
25 deposited in the county treasury and disbursed at the direction of the public
26 fiduciary or shall be deposited or invested in one or more insured banks or
27 in one or more insured credit unions authorized to do business in the county
28 or in one or more insured savings and loan associations authorized to do
29 business in the county, and if there are no such insured banks, insured
30 credit unions or insured savings and loan associations in the county, then
31 the public fiduciary may deposit such THE funds in any insured bank or
32 insured credit union or insured savings and loan association in the state.
33 Money deposited with the county treasurer or deposited or invested with an
34 insured bank, insured credit union or insured savings and loan association
35 shall be withdrawn only at the direction of the public fiduciary.

36 B. The public fiduciary may establish or continue an estate or
37 investment plan of his THE PUBLIC FIDUCIARY'S ward if all of the following
38 apply:

39 1. The public fiduciary receives the approval of the court for the
40 plan.

41 2. The plan is consistent with the standard of care imposed on
42 trustees in section ~~14-7302~~ SECTIONS 14-10804 AND 14-10806.

43 3. The public fiduciary has obtained a surety bond in the amount of
44 the assets within the plan if the court finds that a surety bond is necessary
45 or desirable to protect the assets within the plan.

1 Sec. 12. Repeal
2 Title 14, chapter 7, articles 2, 2.1, 3, 6 and 8, Arizona Revised
3 Statutes, are repealed.

4 Sec. 13. Title 14, Arizona Revised Statutes, is amended by adding
5 chapter 10, to read:

6 CHAPTER 10

7 REVISED UNIFORM TRUST CODE

8 ARTICLE 1. GENERAL PROVISIONS

9 14-10101. Short title

10 THIS CHAPTER MAY BE CITED AS THE REVISED UNIFORM TRUST CODE.

11 14-10102. Scope

12 THIS CHAPTER APPLIES TO EXPRESS TRUSTS, CHARITABLE OR NONCHARITABLE
13 TRUSTS AND TRUSTS CREATED PURSUANT TO A STATUTE, JUDGMENT OR DECREE THAT
14 REQUIRES THE TRUST TO BE ADMINISTERED IN THE MANNER OF AN EXPRESS TRUST.

15 14-10103. Definitions

16 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

17 1. "ACTION", WITH RESPECT TO AN ACT OF A TRUSTEE, INCLUDES A FAILURE
18 TO ACT.

19 2. "BENEFICIARY" MEANS A PERSON WHO EITHER:

20 (a) HAS A PRESENT OR FUTURE BENEFICIAL INTEREST IN A TRUST, VESTED OR
21 CONTINGENT.

22 (b) IN A CAPACITY OTHER THAN THAT OF A TRUSTEE, HOLDS A POWER OF
23 APPOINTMENT OVER TRUST PROPERTY.

24 3. "CHARITABLE TRUST" MEANS A TRUST, OR PORTION OF A TRUST, CREATED
25 FOR A CHARITABLE PURPOSE DESCRIBED IN SECTION 14-10405, SUBSECTION A.

26 4. "CONSERVATOR" MEANS A PERSON APPOINTED BY THE COURT TO ADMINISTER
27 THE ESTATE OF A MINOR OR AN ADULT.

28 5. "ENVIRONMENTAL LAW" MEANS A FEDERAL, STATE OR LOCAL LAW, RULE,
29 REGULATION OR ORDINANCE RELATING TO PROTECTION OF THE ENVIRONMENT.

30 6. "GUARDIAN" MEANS A PERSON APPOINTED BY THE COURT TO MAKE DECISIONS
31 REGARDING THE SUPPORT, CARE, EDUCATION, HEALTH AND WELFARE OF A MINOR OR AN
32 ADULT. GUARDIAN DOES NOT INCLUDE A GUARDIAN AD LITEM.

33 7. "INTERESTS OF THE BENEFICIARIES" MEANS THE BENEFICIAL INTERESTS
34 PROVIDED IN THE TERMS OF THE TRUST.

35 8. "JURISDICTION", WITH RESPECT TO A GEOGRAPHIC AREA, INCLUDES A STATE
36 OR COUNTRY.

37 9. "PERSON" MEANS AN INDIVIDUAL, CORPORATION, BUSINESS TRUST, ESTATE,
38 TRUST, PARTNERSHIP, LIMITED LIABILITY COMPANY, ASSOCIATION, JOINT VENTURE,
39 GOVERNMENT, GOVERNMENTAL SUBDIVISION, AGENCY OR INSTRUMENTALITY, PUBLIC
40 CORPORATION OR ANY OTHER LEGAL OR COMMERCIAL ENTITY.

41 10. "POWER OF WITHDRAWAL" MEANS A PRESENTLY EXERCISABLE GENERAL POWER
42 OF APPOINTMENT OTHER THAN A POWER EXERCISABLE ONLY ON THE CONSENT OF THE
43 TRUSTEE OR A PERSON HOLDING AN ADVERSE INTEREST.

1 11. "PROPERTY" MEANS ANYTHING THAT MAY BE THE SUBJECT OF OWNERSHIP,
2 WHETHER REAL OR PERSONAL, LEGAL OR EQUITABLE, OR ANY INTEREST IN ANYTHING
3 THAT MAY BE THE SUBJECT OF OWNERSHIP.

4 12. "QUALIFIED BENEFICIARY" MEANS A BENEFICIARY WHO, ON THE DATE THE
5 BENEFICIARY'S QUALIFICATION IS DETERMINED:

6 (a) IS A DISTRIBUTE OR PERMISSIBLE DISTRIBUTE OF TRUST INCOME OR
7 PRINCIPAL.

8 (b) WOULD BE A DISTRIBUTE OR PERMISSIBLE DISTRIBUTE OF TRUST INCOME
9 OR PRINCIPAL IF THE INTERESTS OF THE DISTRIBUTES DESCRIBED IN SUBDIVISION
10 (a) OF THIS PARAGRAPH TERMINATED ON THAT DATE.

11 (c) WOULD BE A DISTRIBUTE OR PERMISSIBLE DISTRIBUTE OF TRUST INCOME
12 OR PRINCIPAL IF THE TRUST TERMINATED ON THAT DATE.

13 13. "REVOCABLE", AS APPLIED TO A TRUST, MEANS REVOCABLE BY THE SETTLOR
14 WITHOUT THE CONSENT OF THE TRUSTEE OR A PERSON HOLDING AN ADVERSE INTEREST.

15 14. "SETTLOR" MEANS A PERSON, INCLUDING A TESTATOR, WHO CREATES OR
16 CONTRIBUTES PROPERTY TO A TRUST. IF MORE THAN ONE PERSON CREATES OR
17 CONTRIBUTES PROPERTY TO A TRUST, EACH PERSON IS A SETTLOR OF THE PORTION OF
18 THE TRUST PROPERTY ATTRIBUTABLE TO THAT PERSON'S CONTRIBUTION EXCEPT TO THE
19 EXTENT ANOTHER PERSON HAS THE POWER TO REVOKE OR WITHDRAW THAT PORTION.

20 15. "SPENDTHRIFT PROVISION" MEANS A TERM OF A TRUST THAT RESTRAINS BOTH
21 VOLUNTARY AND INVOLUNTARY TRANSFER OF A BENEFICIARY'S INTEREST.

22 16. "STATE" MEANS A STATE OF THE UNITED STATES, THE DISTRICT OF
23 COLUMBIA, PUERTO RICO, THE UNITED STATES VIRGIN ISLANDS OR ANY TERRITORY OR
24 INSULAR POSSESSION SUBJECT TO THE JURISDICTION OF THE UNITED STATES. STATE
25 INCLUDES AN INDIAN TRIBE OR BAND RECOGNIZED BY FEDERAL LAW OR FORMALLY
26 ACKNOWLEDGED BY A STATE.

27 17. "TERMS OF A TRUST" MEANS THE MANIFESTATION OF THE SETTLOR'S INTENT
28 REGARDING A TRUST'S PROVISIONS AS EXPRESSED IN THE TRUST INSTRUMENT OR AS MAY
29 BE ESTABLISHED BY OTHER EVIDENCE THAT WOULD BE ADMISSIBLE IN A JUDICIAL
30 PROCEEDING.

31 18. "TRUST INSTRUMENT" MEANS AN INSTRUMENT EXECUTED BY THE SETTLOR THAT
32 CONTAINS TERMS OF THE TRUST, INCLUDING ANY AMENDMENTS TO THAT TRUST.

33 19. "TRUSTEE" INCLUDES AN ORIGINAL, ADDITIONAL AND SUCCESSOR TRUSTEE
34 AND A COTRUSTEE.

35 14-10104. Knowledge

36 A. SUBJECT TO SUBSECTION B, A PERSON HAS KNOWLEDGE OF A FACT IF ANY
37 OF THE FOLLOWING APPLY:

38 1. THE PERSON HAS ACTUAL KNOWLEDGE OF IT.

39 2. THE PERSON HAS RECEIVED A NOTICE OR NOTIFICATION OF IT.

40 3. FROM ALL THE FACTS AND CIRCUMSTANCES KNOWN TO THE PERSON AT THE
41 TIME IN QUESTION, THE PERSON HAS REASON TO KNOW IT.

42 B. AN ORGANIZATION THAT CONDUCTS ACTIVITIES THROUGH EMPLOYEES HAS
43 NOTICE OR KNOWLEDGE OF A FACT INVOLVING A TRUST ONLY FROM THE TIME THE
44 INFORMATION WAS RECEIVED BY AN EMPLOYEE HAVING RESPONSIBILITY TO ACT FOR THE
45 TRUST OR WOULD HAVE BEEN BROUGHT TO THE EMPLOYEE'S ATTENTION IF THE

1 ORGANIZATION HAD EXERCISED REASONABLE DILIGENCE. AN ORGANIZATION EXERCISES
2 REASONABLE DILIGENCE IF IT MAINTAINS REASONABLE ROUTINES FOR COMMUNICATING
3 SIGNIFICANT INFORMATION TO THE EMPLOYEE HAVING RESPONSIBILITY TO ACT FOR THE
4 TRUST AND THERE IS REASONABLE COMPLIANCE WITH THE ROUTINES. REASONABLE
5 DILIGENCE DOES NOT REQUIRE AN EMPLOYEE OF THE ORGANIZATION TO COMMUNICATE
6 INFORMATION UNLESS THE COMMUNICATION IS PART OF THE INDIVIDUAL'S REGULAR
7 DUTIES OR THE INDIVIDUAL KNOWS A MATTER INVOLVING THE TRUST WOULD BE
8 MATERIALLY AFFECTED BY THE INFORMATION.

9 14-10105. Default and mandatory rules

10 A. EXCEPT AS OTHERWISE PROVIDED IN THE TERMS OF THE TRUST, THIS
11 CHAPTER GOVERNS THE DUTIES AND POWERS OF A TRUSTEE, RELATIONS AMONG TRUSTEES
12 AND THE RIGHTS AND INTERESTS OF A BENEFICIARY.

13 B. THE TERMS OF A TRUST PREVAIL OVER ANY PROVISION OF THIS CHAPTER
14 EXCEPT:

15 1. THE REQUIREMENTS FOR CREATING A TRUST.

16 2. THE DUTY OF A TRUSTEE TO ACT IN GOOD FAITH AND IN ACCORDANCE WITH
17 THE PURPOSES OF THE TRUST.

18 3. THE REQUIREMENT THAT A TRUST AND ITS TERMS BE FOR THE BENEFIT OF
19 ITS BENEFICIARIES AND THAT THE TRUST HAVE A PURPOSE THAT IS LAWFUL, NOT
20 CONTRARY TO PUBLIC POLICY AND POSSIBLE TO ACHIEVE.

21 4. THE POWER OF THE COURT TO MODIFY OR TERMINATE A TRUST UNDER
22 SECTIONS 14-10410 THROUGH 14-10416.

23 5. THE EFFECT OF A SPENDTHRIFT PROVISION AND THE RIGHTS OF CERTAIN
24 CREDITORS AND ASSIGNEES TO REACH A TRUST AS PROVIDED IN ARTICLE 5 OF THIS
25 CHAPTER.

26 6. THE POWER OF THE COURT UNDER SECTION 14-10702 TO REQUIRE, DISPENSE
27 WITH OR MODIFY OR TERMINATE A BOND.

28 7. THE POWER OF THE COURT UNDER SECTION 14-10708, SUBSECTION B TO
29 ADJUST A TRUSTEE'S COMPENSATION SPECIFIED IN THE TERMS OF THE TRUST THAT IS
30 UNREASONABLY LOW OR HIGH.

31 8. WITH RESPECT TO THE QUALIFIED BENEFICIARIES OF AN IRREVOCABLE TRUST
32 WHO HAVE ATTAINED TWENTY-ONE YEARS OF AGE, THE DUTY UNDER SECTION 14-10813,
33 SUBSECTION B, PARAGRAPHS 2 AND 3, TO NOTIFY THEM OF THE EXISTENCE OF THE
34 TRUST, OF THE IDENTITY OF THE TRUSTEE AND OF THE BENEFICIARIES' RIGHT TO
35 REQUEST TRUSTEE'S REPORTS.

36 9. THE DUTY TO RESPOND TO THE REQUEST OF A QUALIFIED BENEFICIARY OF
37 AN IRREVOCABLE TRUST FOR TRUSTEE'S REPORTS AND OTHER INFORMATION REASONABLY
38 RELATED TO THE ADMINISTRATION OF A TRUST.

39 10. THE EFFECT OF AN EXCULPATORY TERM UNDER SECTION 14-11008.

40 11. THE RIGHTS UNDER SECTIONS 14-11010 THROUGH 14-11013 OF A PERSON
41 OTHER THAN A TRUSTEE OR BENEFICIARY.

42 12. PERIODS OF LIMITATION FOR COMMENCING A JUDICIAL PROCEEDING.

43 13. THE POWER OF THE COURT TO TAKE ACTION AND EXERCISE JURISDICTION AS
44 MAY BE NECESSARY IN THE INTERESTS OF JUSTICE.

1 14. THE SUBJECT MATTER JURISDICTION OF THE COURT AND VENUE FOR
2 COMMENCING A PROCEEDING AS PROVIDED IN SECTIONS 14-10203 AND 14-10204.

3 14-10106. Common law of trusts; principles of equity

4 THE COMMON LAW OF TRUSTS AND PRINCIPLES OF EQUITY SUPPLEMENT THIS
5 CHAPTER, EXCEPT TO THE EXTENT MODIFIED BY THIS CHAPTER OR ANOTHER STATUTE OF
6 THIS STATE.

7 14-10107. Governing law

8 THE MEANING AND EFFECT OF THE TERMS OF A TRUST ARE DETERMINED BY
9 EITHER:

10 1. THE LAW OF THE JURISDICTION DESIGNATED IN THE TERMS UNLESS THE
11 DESIGNATION OF THAT JURISDICTION'S LAW IS CONTRARY TO A STRONG PUBLIC POLICY
12 OF THE JURISDICTION HAVING THE MOST SIGNIFICANT RELATIONSHIP TO THE MATTER
13 AT ISSUE.

14 2. IN THE ABSENCE OF A CONTROLLING DESIGNATION IN THE TERMS OF THE
15 TRUST, THE LAW OF THE JURISDICTION HAVING THE MOST SIGNIFICANT RELATIONSHIP
16 TO THE MATTER AT ISSUE.

17 14-10108. Principal place of administration

18 A. WITHOUT PRECLUDING OTHER MEANS FOR ESTABLISHING A SUFFICIENT
19 CONNECTION WITH THE DESIGNATED JURISDICTION, TERMS OF A TRUST DESIGNATING THE
20 PRINCIPAL PLACE OF ADMINISTRATION ARE VALID AND CONTROLLING IF EITHER:

21 1. A TRUSTEE'S PRINCIPAL PLACE OF BUSINESS IS LOCATED IN OR A TRUSTEE
22 IS A RESIDENT OF THE DESIGNATED JURISDICTION.

23 2. ALL OR PART OF THE ADMINISTRATION OCCURS IN THE DESIGNATED
24 JURISDICTION.

25 B. A TRUSTEE IS UNDER A CONTINUING DUTY TO ADMINISTER THE TRUST AT A
26 PLACE APPROPRIATE TO ITS PURPOSES, ITS ADMINISTRATION, AND THE INTERESTS OF
27 THE BENEFICIARIES.

28 C. WITHOUT PRECLUDING THE RIGHT OF THE COURT TO ORDER, APPROVE OR
29 DISAPPROVE A TRANSFER, THE TRUSTEE, IN FURTHERANCE OF THE DUTY PRESCRIBED BY
30 SUBSECTION B OF THIS SECTION, MAY TRANSFER THE TRUST'S PRINCIPAL PLACE OF
31 ADMINISTRATION TO ANOTHER STATE OR TO A JURISDICTION OUTSIDE OF THE UNITED
32 STATES.

33 D. THE TRUSTEE SHALL NOTIFY THE QUALIFIED BENEFICIARIES OF A PROPOSED
34 TRANSFER OF A TRUST'S PRINCIPAL PLACE OF ADMINISTRATION NOT LESS THAN SIXTY
35 DAYS BEFORE INITIATING THE TRANSFER. UNLESS A CORPORATE TRUSTEE INDICATES
36 AN INTENT TO CHANGE THE PRINCIPAL PLACE OF BUSINESS IN A NOTICE TO QUALIFIED
37 BENEFICIARIES, A TRANSFER BY THE CORPORATE TRUSTEE OF SOME OF THE FUNCTIONS
38 OF A TRUST TO ANOTHER STATE OR STATES IS NOT A TRANSFER OF THE TRUST'S
39 PRINCIPAL PLACE OF BUSINESS IF THE CORPORATE TRUSTEE MAINTAINS AN OFFICE IN
40 THIS STATE. THE NOTICE OF PROPOSED TRANSFER MUST INCLUDE:

41 1. THE NAME OF THE JURISDICTION TO WHICH THE PRINCIPAL PLACE OF
42 ADMINISTRATION IS TO BE TRANSFERRED.

43 2. THE ADDRESS AND TELEPHONE NUMBER AT THE NEW LOCATION AT WHICH THE
44 TRUSTEE CAN BE CONTACTED.

45 3. AN EXPLANATION OF THE REASONS FOR THE PROPOSED TRANSFER.

1 4. THE DATE ON WHICH THE PROPOSED TRANSFER IS ANTICIPATED TO OCCUR.

2 5. THE DATE, NOT LESS THAN SIXTY DAYS AFTER THE GIVING OF THE NOTICE,
3 BY WHICH THE QUALIFIED BENEFICIARY MUST NOTIFY THE TRUSTEE OF AN OBJECTION
4 TO THE PROPOSED TRANSFER.

5 E. THE AUTHORITY OF A TRUSTEE UNDER THIS SECTION TO TRANSFER A TRUST'S
6 PRINCIPAL PLACE OF ADMINISTRATION TERMINATES IF A QUALIFIED BENEFICIARY
7 NOTIFIES THE TRUSTEE OF AN OBJECTION TO THE PROPOSED TRANSFER ON OR BEFORE
8 THE DATE SPECIFIED IN THE NOTICE.

9 F. IN CONNECTION WITH A TRANSFER OF THE TRUST'S PRINCIPAL PLACE OF
10 ADMINISTRATION, THE TRUSTEE MAY TRANSFER SOME OR ALL OF THE TRUST PROPERTY
11 TO A SUCCESSOR TRUSTEE DESIGNATED IN THE TERMS OF THE TRUST OR APPOINTED
12 PURSUANT TO SECTION 14-10704.

13 14-10109. Methods and waiver of notice

14 A. NOTICE TO A PERSON UNDER THIS CHAPTER OR THE SENDING OF A DOCUMENT
15 TO A PERSON UNDER THIS CHAPTER MUST BE ACCOMPLISHED IN A MANNER REASONABLY
16 SUITABLE UNDER THE CIRCUMSTANCES AND LIKELY TO RESULT IN RECEIPT OF THE
17 NOTICE OR DOCUMENT. PERMISSIBLE METHODS OF NOTICE OR FOR SENDING A DOCUMENT
18 INCLUDE FIRST CLASS MAIL, PERSONAL DELIVERY, DELIVERY TO THE PERSON'S LAST
19 KNOWN PLACE OF RESIDENCE OR PLACE OF BUSINESS OR A PROPERLY DIRECTED
20 ELECTRONIC MESSAGE.

21 B. NOTICE OTHERWISE REQUIRED UNDER THIS CHAPTER OR A DOCUMENT
22 OTHERWISE REQUIRED TO BE SENT UNDER THIS CHAPTER NEED NOT BE PROVIDED TO A
23 PERSON WHOSE IDENTITY OR LOCATION IS UNKNOWN TO AND NOT REASONABLY
24 ASCERTAINABLE BY THE TRUSTEE.

25 C. NOTICE UNDER THIS CHAPTER OR THE SENDING OF A DOCUMENT UNDER THIS
26 CHAPTER MAY BE WAIVED BY THE PERSON TO BE NOTIFIED OR SENT THE DOCUMENT.

27 D. NOTICE OF A JUDICIAL PROCEEDING MUST BE GIVEN PURSUANT TO SECTION
28 14-1401.

29 14-10110. Others treated as qualified beneficiaries

30 A. A CHARITABLE ORGANIZATION EXPRESSLY MANDATED TO RECEIVE
31 DISTRIBUTIONS UNDER THE TERMS OF A CHARITABLE TRUST OR A PERSON APPOINTED TO
32 ENFORCE A TRUST CREATED FOR THE CARE OF AN ANIMAL OR ANOTHER NONCHARITABLE
33 PURPOSE AS PROVIDED IN SECTION 14-10408 OR 14-10409 HAS THE RIGHTS OF A
34 QUALIFIED BENEFICIARY UNDER THIS CHAPTER.

35 B. THE ATTORNEY GENERAL OF THIS STATE HAS THE RIGHTS OF A QUALIFIED
36 BENEFICIARY WITH RESPECT TO A CHARITABLE TRUST HAVING ITS PRINCIPAL PLACE OF
37 ADMINISTRATION IN THIS STATE.

38 14-10111. Nonjudicial settlement agreements; definition

39 A. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION B, INTERESTED PERSONS
40 MAY ENTER INTO A BINDING NONJUDICIAL SETTLEMENT AGREEMENT WITH RESPECT TO ANY
41 MATTER INVOLVING A TRUST.

42 B. A NONJUDICIAL SETTLEMENT AGREEMENT IS VALID ONLY TO THE EXTENT IT
43 DOES NOT VIOLATE A MATERIAL PURPOSE OF THE TRUST AND INCLUDES TERMS AND
44 CONDITIONS THAT COULD BE PROPERLY APPROVED BY THE COURT UNDER THIS CHAPTER
45 OR OTHER APPLICABLE LAW.

1 C. MATTERS THAT MAY BE RESOLVED BY A NONJUDICIAL SETTLEMENT AGREEMENT
2 INCLUDE:

- 3 1. THE INTERPRETATION OR CONSTRUCTION OF THE TERMS OF THE TRUST.
4 2. THE APPROVAL OF A TRUSTEE'S REPORT OR ACCOUNTING.
5 3. DIRECTION TO A TRUSTEE TO REFRAIN FROM PERFORMING A PARTICULAR ACT
6 OR THE GRANT TO A TRUSTEE OF ANY NECESSARY OR DESIRABLE POWER.
7 4. THE RESIGNATION OR APPOINTMENT OF A TRUSTEE AND THE DETERMINATION
8 OF A TRUSTEE'S COMPENSATION.
9 5. THE TRANSFER OF A TRUST'S PRINCIPAL PLACE OF ADMINISTRATION.
10 6. THE LIABILITY OF A TRUSTEE FOR AN ACTION RELATING TO THE TRUST.

11 D. ANY INTERESTED PERSON MAY REQUEST THE COURT TO APPROVE A
12 NONJUDICIAL SETTLEMENT AGREEMENT TO DETERMINE WHETHER THE REPRESENTATION AS
13 PROVIDED IN ARTICLE 3 OF THIS CHAPTER WAS ADEQUATE AND TO DETERMINE WHETHER
14 THE AGREEMENT CONTAINS TERMS AND CONDITIONS THE COURT COULD HAVE PROPERLY
15 APPROVED.

16 E. THIS SECTION APPLIES ONLY TO ANY TRUST THAT BECOMES IRREVOCABLE ON
17 OR AFTER JANUARY 1, 2004.

18 F. FOR THE PURPOSES OF THIS SECTION, "INTERESTED PERSONS" HAS THE SAME
19 MEANING PRESCRIBED IN SECTION 14-1201.

20 14-10112. Rules of construction

21 THE RULES OF CONSTRUCTION THAT APPLY IN THIS STATE TO THE
22 INTERPRETATION OF AND DISPOSITION OF PROPERTY BY WILL ALSO APPLY AS
23 APPROPRIATE TO THE INTERPRETATION OF THE TERMS OF A TRUST AND THE DISPOSITION
24 OF THE TRUST PROPERTY.

25 ARTICLE 2. JUDICIAL PROCEEDINGS

26 14-10121. Role of court in administration of trust

27 A. THE COURT MAY INTERVENE IN THE ADMINISTRATION OF A TRUST TO THE
28 EXTENT ITS JURISDICTION IS INVOKED BY AN INTERESTED PERSON OR AS PROVIDED BY
29 LAW.

30 B. A TRUST IS NOT SUBJECT TO CONTINUING JUDICIAL SUPERVISION UNLESS
31 ORDERED BY THE COURT.

32 C. A JUDICIAL PROCEEDING INVOLVING A TRUST MAY RELATE TO ANY MATTER
33 INVOLVING THE TRUST'S ADMINISTRATION, INCLUDING A REQUEST FOR INSTRUCTIONS
34 AND AN ACTION TO DECLARE RIGHTS.

35 14-10122. Jurisdiction over trustee and beneficiary

36 A. BY ACCEPTING THE TRUSTEESHIP OF A TRUST HAVING ITS PRINCIPAL PLACE
37 OF ADMINISTRATION IN THIS STATE OR BY MOVING THE PRINCIPAL PLACE OF
38 ADMINISTRATION TO THIS STATE, THE TRUSTEE SUBMITS PERSONALLY TO THE
39 JURISDICTION OF THE COURTS OF THIS STATE REGARDING ANY MATTER INVOLVING THE
40 TRUST.

41 B. WITH RESPECT TO THEIR INTERESTS IN THE TRUST, THE BENEFICIARIES OF
42 A TRUST HAVING ITS PRINCIPAL PLACE OF ADMINISTRATION IN THIS STATE ARE
43 SUBJECT TO THE JURISDICTION OF THE COURTS OF THIS STATE REGARDING ANY MATTER
44 INVOLVING THE TRUST. BY ACCEPTING A DISTRIBUTION FROM SUCH A TRUST, THE

1 RECIPIENT SUBMITS PERSONALLY TO THE JURISDICTION OF THE COURTS OF THIS STATE
2 REGARDING ANY MATTER INVOLVING THE TRUST.

3 C. THIS SECTION DOES NOT PRECLUDE OTHER METHODS OF OBTAINING
4 JURISDICTION OVER A TRUSTEE, BENEFICIARY OR OTHER PERSON RECEIVING PROPERTY
5 FROM THE TRUST.

6 14-10123. Subject matter jurisdiction

7 A. THE SUPERIOR COURT HAS EXCLUSIVE JURISDICTION OF PROCEEDINGS IN
8 THIS STATE BROUGHT BY A TRUSTEE OR BENEFICIARY CONCERNING THE ADMINISTRATION
9 OF A TRUST.

10 B. THE SUPERIOR COURT HAS CONCURRENT JURISDICTION WITH OTHER COURTS
11 OF THIS STATE OF OTHER PROCEEDINGS INVOLVING A TRUST.

12 14-10124. Venue

13 A. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION B, VENUE FOR A JUDICIAL
14 PROCEEDING INVOLVING A TRUST IS IN THE COUNTY OF THIS STATE IN WHICH THE
15 TRUST'S PRINCIPAL PLACE OF ADMINISTRATION IS OR WILL BE LOCATED AND, IF THE
16 TRUST IS CREATED BY WILL AND THE ESTATE IS NOT YET CLOSED, IN THE COUNTY IN
17 WHICH THE DECEDENT'S ESTATE IS BEING ADMINISTERED.

18 B. IF A TRUST HAS NO TRUSTEE, VENUE FOR A JUDICIAL PROCEEDING FOR THE
19 APPOINTMENT OF A TRUSTEE IS IN A COUNTY OF THIS STATE IN WHICH A BENEFICIARY
20 RESIDES, IN A COUNTY IN WHICH ANY TRUST PROPERTY IS LOCATED, AND IF THE TRUST
21 IS CREATED BY WILL, IN THE COUNTY IN WHICH THE DECEDENT'S ESTATE WAS OR IS
22 BEING ADMINISTERED.

23 ARTICLE 3. REPRESENTATION

24 14-10301. Representation

25 SECTIONS 14-1404 THROUGH 14-1408 APPLY TO TRUSTS GOVERNED BY THIS
26 CHAPTER.

27 ARTICLE 4. CREATION, VALIDITY, MODIFICATION
28 AND TERMINATION OF TRUST

29 14-10401. Methods of creating trust

30 A TRUST MAY BE CREATED BY:

31 1. TRANSFER OF PROPERTY TO ANOTHER PERSON AS TRUSTEE DURING THE
32 SETTLOR'S LIFETIME OR BY WILL OR OTHER DISPOSITION TAKING EFFECT ON THE
33 SETTLOR'S DEATH.

34 2. DECLARATION BY THE OWNER OF PROPERTY THAT THE OWNER HOLDS
35 IDENTIFIABLE PROPERTY AS TRUSTEE.

36 3. EXERCISE OF A POWER OF APPOINTMENT IN FAVOR OF A TRUSTEE.

37 14-10402. Requirements for creation

38 A. EXCEPT AS PROVIDED IN SECTION 14-5409, A TRUST IS CREATED ONLY IF
39 ALL OF THE FOLLOWING ARE TRUE:

40 1. THE SETTLOR HAS CAPACITY TO CREATE A TRUST.

41 2. THE SETTLOR INDICATES AN INTENTION TO CREATE THE TRUST.

42 3. THE TRUST HAS A DEFINITE BENEFICIARY OR IS:

43 (a) A CHARITABLE TRUST.

44 (b) A TRUST FOR THE CARE OF AN ANIMAL, AS PROVIDED IN SECTION
45 14-10408.

1 (c) A TRUST FOR A NONCHARITABLE PURPOSE, AS PROVIDED IN SECTION
2 14-10409.

3 4. THE TRUSTEE HAS DUTIES TO PERFORM.

4 5. THE SAME PERSON IS NOT THE SOLE TRUSTEE AND SOLE BENEFICIARY.

5 B. A BENEFICIARY IS DEFINITE IF THE BENEFICIARY CAN BE ASCERTAINED NOW
6 OR IN THE FUTURE, SUBJECT TO ANY APPLICABLE RULE AGAINST PERPETUITIES.

7 C. A POWER IN A TRUSTEE TO SELECT A BENEFICIARY FROM AN INDEFINITE
8 CLASS IS VALID. IF THE POWER IS NOT EXERCISED WITHIN A REASONABLE TIME, THE
9 POWER FAILS AND THE PROPERTY SUBJECT TO THE POWER PASSES TO THE PERSONS WHO
10 WOULD HAVE TAKEN THE PROPERTY HAD THE POWER NOT BEEN CONFERRED.

11 14-10403. Trusts created in other jurisdictions

12 A TRUST NOT CREATED BY WILL IS VALIDLY CREATED IF ITS CREATION COMPLIES
13 WITH THE LAW OF THE JURISDICTION IN WHICH THE TRUST INSTRUMENT WAS EXECUTED
14 OR THE LAW OF THE JURISDICTION IN WHICH, AT THE TIME OF CREATION, EITHER:

15 1. THE SETTLOR WAS DOMICILED, HAD A PLACE OF ABODE OR WAS A NATIONAL.

16 2. A TRUSTEE WAS DOMICILED OR HAD A PLACE OF BUSINESS.

17 3. ANY TRUST PROPERTY WAS LOCATED.

18 14-10404. Trust purposes

19 A TRUST MAY BE CREATED ONLY TO THE EXTENT ITS PURPOSES ARE LAWFUL, NOT
20 CONTRARY TO PUBLIC POLICY AND POSSIBLE TO ACHIEVE. A TRUST AND ITS TERMS
21 MUST BE FOR THE BENEFIT OF ITS BENEFICIARIES.

22 14-10405. Charitable purposes; enforcement

23 A. A CHARITABLE TRUST MAY BE CREATED FOR THE RELIEF OF POVERTY, THE
24 ADVANCEMENT OF EDUCATION OR RELIGION, THE PROMOTION OF HEALTH, GOVERNMENTAL
25 OR MUNICIPAL PURPOSES OR OTHER PURPOSES, THE ACHIEVEMENT OF WHICH IS
26 BENEFICIAL TO THE COMMUNITY.

27 B. IF THE TERMS OF A CHARITABLE TRUST DO NOT INDICATE A PARTICULAR
28 CHARITABLE PURPOSE OR BENEFICIARY, THE COURT MAY SELECT ONE OR MORE
29 CHARITABLE PURPOSES OR BENEFICIARIES. THE SELECTION MUST BE CONSISTENT WITH
30 THE SETTLOR'S INTENTION TO THE EXTENT IT CAN BE ASCERTAINED.

31 C. THE SETTLOR OF A CHARITABLE TRUST, AMONG OTHERS, MAY MAINTAIN A
32 PROCEEDING TO ENFORCE THE TRUST.

33 14-10406. Creation of trust induced by fraud, duress or undue
34 influence

35 A TRUST IS VOID, IN WHOLE OR IN PART, TO THE EXTENT ITS CREATION WAS
36 INDUCED BY FRAUD, DURESS OR UNDUE INFLUENCE.

37 14-10407. Evidence of oral trust

38 EXCEPT AS REQUIRED BY A STATUTE OTHER THAN THIS CHAPTER, A TRUST NEED
39 NOT BE EVIDENCED BY A TRUST INSTRUMENT, BUT THE CREATION OF AN ORAL TRUST AND
40 ITS TERMS MAY BE ESTABLISHED ONLY BY CLEAR AND CONVINCING EVIDENCE.

41 14-10408. Trust for care of animal

42 A. A TRUST MAY BE CREATED TO PROVIDE FOR THE CARE OF AN ANIMAL ALIVE
43 DURING THE SETTLOR'S LIFETIME. THE TRUST TERMINATES ON THE DEATH OF THE
44 ANIMAL OR, IF THE TRUST WAS CREATED TO PROVIDE FOR THE CARE OF MORE THAN ONE

1 ANIMAL ALIVE DURING THE SETTLOR'S LIFETIME, ON THE DEATH OF THE LAST
2 SURVIVING ANIMAL.

3 B. A TRUST AUTHORIZED BY THIS SECTION MAY BE ENFORCED BY A PERSON
4 APPOINTED IN THE TERMS OF THE TRUST OR, IF NO PERSON IS SO APPOINTED, BY A
5 PERSON APPOINTED BY THE COURT. A PERSON HAVING AN INTEREST IN THE WELFARE
6 OF THE ANIMAL MAY REQUEST THE COURT TO APPOINT A PERSON TO ENFORCE THE TRUST
7 OR TO REMOVE A PERSON APPOINTED.

8 C. PROPERTY OF A TRUST AUTHORIZED BY THIS SECTION MAY BE APPLIED ONLY
9 TO ITS INTENDED USE, EXCEPT TO THE EXTENT THE COURT DETERMINES THAT THE VALUE
10 OF THE TRUST PROPERTY EXCEEDS THE AMOUNT REQUIRED FOR THE INTENDED
11 USE. EXCEPT AS OTHERWISE PROVIDED IN THE TERMS OF THE TRUST, PROPERTY NOT
12 REQUIRED FOR THE INTENDED USE MUST BE DISTRIBUTED TO THE SETTLOR, IF THEN
13 LIVING, OR OTHERWISE TO THE SETTLOR'S SUCCESSORS IN INTEREST.

14 14-10409. Noncharitable trust without ascertainable beneficiary

15 EXCEPT AS OTHERWISE PROVIDED IN SECTION 14-10408 OR BY ANOTHER STATUTE,
16 THE FOLLOWING RULES APPLY:

17 1. A TRUST MAY BE CREATED FOR A NONCHARITABLE PURPOSE WITHOUT A
18 DEFINITE OR DEFINITELY ASCERTAINABLE BENEFICIARY OR FOR A NONCHARITABLE BUT
19 OTHERWISE VALID PURPOSE TO BE SELECTED BY THE TRUSTEE. THE TRUST MAY NOT BE
20 ENFORCED FOR MORE THAN TWENTY-ONE YEARS.

21 2. A TRUST AUTHORIZED BY THIS SECTION MAY BE ENFORCED BY A PERSON
22 APPOINTED IN THE TERMS OF THE TRUST OR, IF NO PERSON IS SO APPOINTED, BY A
23 PERSON APPOINTED BY THE COURT.

24 3. PROPERTY OF A TRUST AUTHORIZED BY THIS SECTION MAY BE APPLIED ONLY
25 TO ITS INTENDED USE, EXCEPT TO THE EXTENT THE COURT DETERMINES THAT THE VALUE
26 OF THE TRUST PROPERTY EXCEEDS THE AMOUNT REQUIRED FOR THE INTENDED
27 USE. EXCEPT AS OTHERWISE PROVIDED IN THE TERMS OF THE TRUST, PROPERTY NOT
28 REQUIRED FOR THE INTENDED USE MUST BE DISTRIBUTED TO THE SETTLOR, IF THEN
29 LIVING, OR OTHERWISE TO THE SETTLOR'S SUCCESSORS IN INTEREST.

30 14-10410. Modification or termination of trust; proceedings for
31 approval or disapproval

32 A. IN ADDITION TO THE METHODS OF TERMINATION PRESCRIBED BY SECTIONS
33 14-10411 THROUGH 14-10414, A TRUST TERMINATES TO THE EXTENT THE TRUST IS
34 REVOKED OR EXPIRES PURSUANT TO ITS TERMS, NO PURPOSE OF THE TRUST REMAINS TO
35 BE ACHIEVED OR THE PURPOSES OF THE TRUST HAVE BECOME UNLAWFUL, CONTRARY TO
36 PUBLIC POLICY OR IMPOSSIBLE TO ACHIEVE.

37 B. A PROCEEDING TO APPROVE OR DISAPPROVE A PROPOSED MODIFICATION OR
38 TERMINATION UNDER SECTIONS 14-10411 THROUGH 14-10416, OR TRUST COMBINATION
39 OR DIVISION UNDER SECTION 14-10417, MAY BE COMMENCED BY A TRUSTEE OR
40 BENEFICIARY, AND A PROCEEDING TO APPROVE OR DISAPPROVE A PROPOSED
41 MODIFICATION OR TERMINATION UNDER SECTION 14-10411 MAY BE COMMENCED BY THE
42 SETTLOR. THE SETTLOR OF A CHARITABLE TRUST MAY MAINTAIN A PROCEEDING TO
43 MODIFY THE TRUST UNDER SECTION 14-10413.

1 14-10411. Modification or termination of noncharitable
2 irrevocable trust by consent

3 A. A NONCHARITABLE IRREVOCABLE TRUST MAY BE MODIFIED OR TERMINATED ON
4 CONSENT OF THE SETTLOR AND ALL BENEFICIARIES, EVEN IF THE MODIFICATION OR
5 TERMINATION IS INCONSISTENT WITH A MATERIAL PURPOSE OF THE TRUST. A
6 SETTLOR'S POWER TO CONSENT TO A TRUST'S TERMINATION MAY BE EXERCISED BY AN
7 AGENT UNDER A POWER OF ATTORNEY ONLY TO THE EXTENT EXPRESSLY AUTHORIZED BY
8 THE TERMS OF THE TRUST OR, IF THE TERMS OF THE TRUST DO NOT PROHIBIT AN AGENT
9 FROM EXERCISING POWERS ON BEHALF OF THE SETTLOR, TO THE EXTENT EXPRESSLY
10 AUTHORIZED UNDER THE POWER OF ATTORNEY. IF AN AGENT IS NOT SO AUTHORIZED AND
11 THE TERMS OF THE TRUST DO NOT PROHIBIT A CONSERVATOR FROM EXERCISING POWERS
12 ON BEHALF OF A SETTLOR, A SETTLOR'S POWER TO CONSENT TO A TRUST'S TERMINATION
13 MAY BE EXERCISED BY THE SETTLOR'S CONSERVATOR WITH THE APPROVAL OF THE COURT
14 SUPERVISING THE CONSERVATORSHIP OR BY THE SETTLOR'S GUARDIAN WITH THE
15 APPROVAL OF THE COURT SUPERVISING THE GUARDIANSHIP IF AN AGENT IS NOT SO
16 AUTHORIZED AND A CONSERVATOR HAS NOT BEEN APPOINTED.

17 B. A NONCHARITABLE IRREVOCABLE TRUST MAY BE TERMINATED ON CONSENT OF
18 ALL OF THE BENEFICIARIES IF THE COURT CONCLUDES THAT CONTINUANCE OF THE TRUST
19 IS NOT NECESSARY TO ACHIEVE ANY MATERIAL PURPOSE OF THE TRUST. A
20 NONCHARITABLE IRREVOCABLE TRUST MAY BE MODIFIED ON CONSENT OF ALL OF THE
21 BENEFICIARIES IF THE COURT CONCLUDES THAT MODIFICATION IS NOT INCONSISTENT
22 WITH A MATERIAL PURPOSE OF THE TRUST.

23 C. ON TERMINATION OF A TRUST UNDER SUBSECTION A OR B, THE TRUSTEE
24 SHALL DISTRIBUTE THE TRUST PROPERTY AS AGREED BY THE BENEFICIARIES.

25 D. IF NOT ALL OF THE BENEFICIARIES CONSENT TO A PROPOSED MODIFICATION
26 OR TERMINATION OF THE TRUST UNDER SUBSECTION A OR B, THE MODIFICATION OR
27 TERMINATION MAY BE APPROVED BY THE COURT IF THE COURT IS SATISFIED THAT:

28 1. IF ALL OF THE BENEFICIARIES HAD CONSENTED, THE TRUST COULD HAVE
29 BEEN MODIFIED OR TERMINATED UNDER THIS SECTION.

30 2. THE INTERESTS OF A BENEFICIARY WHO DOES NOT CONSENT WILL BE
31 ADEQUATELY PROTECTED.

32 14-10412. Modification or termination because of unanticipated
33 circumstances or inability to administer trust
34 effectively

35 A. THE COURT MAY MODIFY THE ADMINISTRATIVE OR DISPOSITIVE TERMS OF A
36 TRUST OR TERMINATE THE TRUST IF, BECAUSE OF CIRCUMSTANCES NOT ANTICIPATED BY
37 THE SETTLOR, MODIFICATION OR TERMINATION WILL FURTHER THE PURPOSES OF THE
38 TRUST. TO THE EXTENT PRACTICABLE, THE MODIFICATION MUST BE MADE IN
39 ACCORDANCE WITH THE SETTLOR'S PROBABLE INTENTION.

40 B. THE COURT MAY MODIFY THE ADMINISTRATIVE TERMS OF A TRUST IF
41 CONTINUATION OF THE TRUST ON ITS EXISTING TERMS WOULD BE IMPRACTICABLE OR
42 WASTEFUL OR WOULD IMPAIR THE TRUST'S ADMINISTRATION.

43 C. ON TERMINATION OF A TRUST UNDER THIS SECTION, THE TRUSTEE SHALL
44 DISTRIBUTE THE TRUST PROPERTY IN A MANNER CONSISTENT WITH THE PURPOSES OF THE
45 TRUST.

1 14-10413. Cy pres

2 A. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION B, IF A PARTICULAR
3 CHARITABLE PURPOSE BECOMES UNLAWFUL, IMPRACTICABLE, IMPOSSIBLE TO ACHIEVE OR
4 WASTEFUL:

5 1. THE TRUST DOES NOT FAIL IN WHOLE OR IN PART.

6 2. THE TRUST PROPERTY DOES NOT REVERT TO THE SETTLOR OR THE SETTLOR'S
7 SUCCESSORS IN INTEREST.

8 3. THE COURT MAY APPLY CY PRES TO MODIFY OR TERMINATE THE TRUST BY
9 DIRECTING THAT THE TRUST PROPERTY BE APPLIED OR DISTRIBUTED IN WHOLE OR IN
10 PART IN A MANNER CONSISTENT WITH THE SETTLOR'S CHARITABLE PURPOSES.

11 B. A PROVISION IN THE TERMS OF A CHARITABLE TRUST THAT WOULD RESULT
12 IN DISTRIBUTION OF THE TRUST PROPERTY TO A NONCHARITABLE BENEFICIARY PREVAILS
13 OVER THE POWER OF THE COURT UNDER SUBSECTION A TO APPLY CY PRES TO MODIFY OR
14 TERMINATE THE TRUST ONLY IF, WHEN THE PROVISION TAKES EFFECT:

15 1. THE TRUST PROPERTY IS TO REVERT TO THE SETTLOR AND THE SETTLOR IS
16 STILL LIVING.

17 2. FEWER THAN TWENTY-ONE YEARS HAVE ELAPSED SINCE THE DATE OF THE
18 TRUST'S CREATION.

19 14-10414. Modification or termination of uneconomic trust

20 A. AFTER NOTICE TO THE QUALIFIED BENEFICIARIES, THE TRUSTEE OF A TRUST
21 CONSISTING OF TRUST PROPERTY HAVING A TOTAL VALUE OF LESS THAN ONE HUNDRED
22 THOUSAND DOLLARS MAY TERMINATE THE TRUST IF THE TRUSTEE CONCLUDES THAT THE
23 VALUE OF THE TRUST PROPERTY IS INSUFFICIENT TO JUSTIFY THE COST OF
24 ADMINISTRATION.

25 B. THE COURT MAY MODIFY OR TERMINATE A TRUST OR REMOVE THE TRUSTEE AND
26 APPOINT A DIFFERENT TRUSTEE IF IT DETERMINES THAT THE VALUE OF THE TRUST
27 PROPERTY IS INSUFFICIENT TO JUSTIFY THE COST OF ADMINISTRATION.

28 C. ON TERMINATION OF A TRUST UNDER THIS SECTION, THE TRUSTEE SHALL
29 DISTRIBUTE THE TRUST PROPERTY IN A MANNER CONSISTENT WITH THE PURPOSES OF THE
30 TRUST.

31 D. THIS SECTION DOES NOT APPLY TO AN EASEMENT FOR CONSERVATION OR
32 PRESERVATION.

33 14-10415. Reformation to correct mistakes

34 THE COURT MAY REFORM THE TERMS OF A TRUST, EVEN IF UNAMBIGUOUS, TO
35 CONFORM THE TERMS TO THE SETTLOR'S INTENTION IF IT IS PROVED BY CLEAR AND
36 CONVINCING EVIDENCE THAT BOTH THE SETTLOR'S INTENT AND THE TERMS OF THE TRUST
37 WERE AFFECTED BY A MISTAKE OF FACT OR LAW, WHETHER IN EXPRESSION OR
38 INDUCEMENT.

39 14-10416. Modification to achieve settlor's tax objectives

40 TO ACHIEVE THE SETTLOR'S TAX OBJECTIVES, THE COURT MAY MODIFY THE TERMS
41 OF A TRUST IN A MANNER THAT IS NOT CONTRARY TO THE SETTLOR'S PROBABLE
42 INTENTION. THE COURT MAY PROVIDE THAT THE MODIFICATION HAS RETROACTIVE
43 EFFECT.

1 14-10417. Combination and division of trusts

2 AFTER NOTICE TO THE QUALIFIED BENEFICIARIES, A TRUSTEE MAY COMBINE TWO
3 OR MORE TRUSTS INTO A SINGLE TRUST OR DIVIDE A TRUST INTO TWO OR MORE
4 SEPARATE TRUSTS, IF THE RESULT DOES NOT IMPAIR RIGHTS OF ANY BENEFICIARY OR
5 ADVERSELY AFFECT ACHIEVEMENT OF THE PURPOSES OF THE TRUST.

6 ARTICLE 5. CREDITOR'S CLAIMS;

7 SPENDTHRIFT AND DISCRETIONARY TRUSTS

8 14-10501. Rights of beneficiary's creditor or assignee

9 TO THE EXTENT A BENEFICIARY'S INTEREST IS NOT PROTECTED BY A
10 SPENDTHRIFT PROVISION, THE COURT MAY AUTHORIZE A CREDITOR OR ASSIGNEE OF THE
11 BENEFICIARY TO REACH THE BENEFICIARY'S INTEREST BY ATTACHMENT OF PRESENT OR
12 FUTURE DISTRIBUTIONS TO OR FOR THE BENEFIT OF THE BENEFICIARY OR BY OTHER
13 MEANS. THE COURT MAY LIMIT THE AWARD TO SUCH RELIEF AS IS APPROPRIATE UNDER
14 THE CIRCUMSTANCES.

15 14-10502. Spendthrift provision

16 A. A SPENDTHRIFT PROVISION IS VALID ONLY IF IT RESTRAINS BOTH
17 VOLUNTARY AND INVOLUNTARY TRANSFER OF A BENEFICIARY'S INTEREST.

18 B. A TERM OF A TRUST PROVIDING THAT THE INTEREST OF A BENEFICIARY IS
19 HELD SUBJECT TO A SPENDTHRIFT TRUST, OR WORDS OF SIMILAR IMPORT, IS
20 SUFFICIENT TO RESTRAIN BOTH VOLUNTARY AND INVOLUNTARY TRANSFER OF THE
21 BENEFICIARY'S INTEREST.

22 C. A BENEFICIARY MAY NOT TRANSFER AN INTEREST IN A TRUST IN VIOLATION
23 OF A VALID SPENDTHRIFT PROVISION AND, EXCEPT AS OTHERWISE PROVIDED IN THIS
24 ARTICLE, A CREDITOR OR ASSIGNEE OF THE BENEFICIARY MAY NOT REACH THE INTEREST
25 OR A DISTRIBUTION BY THE TRUSTEE BEFORE ITS RECEIPT BY THE BENEFICIARY.

26 14-10503. Exceptions to spendthrift provision; definition

27 A. EVEN IF A TRUST CONTAINS A SPENDTHRIFT PROVISION, A BENEFICIARY'S
28 CHILD, SPOUSE OR FORMER SPOUSE WHO HAS A JUDGMENT OR COURT ORDER AGAINST THE
29 BENEFICIARY FOR SUPPORT OR MAINTENANCE, OR A JUDGMENT CREDITOR WHO HAS
30 PROVIDED SERVICES FOR THE PROTECTION OF A BENEFICIARY'S INTEREST IN THE
31 TRUST, MAY OBTAIN FROM A COURT AN ORDER ATTACHING PRESENT OR FUTURE
32 DISTRIBUTIONS TO OR FOR THE BENEFIT OF THE BENEFICIARY.

33 B. A SPENDTHRIFT PROVISION IS UNENFORCEABLE AGAINST A CLAIM OF THIS
34 STATE OR THE UNITED STATES TO THE EXTENT A STATUTE OF THIS STATE OR FEDERAL
35 LAW SO PROVIDES.

36 C. IN THIS SECTION, "CHILD" INCLUDES ANY PERSON FOR WHOM AN ORDER OR
37 JUDGMENT FOR CHILD SUPPORT HAS BEEN ENTERED IN THIS OR ANOTHER STATE.

38 14-10504. Discretionary trusts; effect of standard; definition
39 of child

40 A. EXCEPT AS PROVIDED IN SUBSECTION B, WHETHER OR NOT A TRUST CONTAINS
41 A SPENDTHRIFT PROVISION, A CREDITOR OF A BENEFICIARY MAY NOT COMPEL A
42 DISTRIBUTION THAT IS SUBJECT TO THE TRUSTEE'S DISCRETION, EVEN IF EITHER:

43 1. THE DISCRETION IS EXPRESSED IN THE FORM OF A STANDARD OF
44 DISTRIBUTION.

45 2. THE TRUSTEE HAS ABUSED THE DISCRETION.

1 B. TO THE EXTENT A TRUSTEE HAS NOT COMPLIED WITH A STANDARD OF
2 DISTRIBUTION OR HAS ABUSED A DISCRETION:

3 1. A DISTRIBUTION MAY BE ORDERED BY THE COURT TO SATISFY A JUDGMENT
4 OR COURT ORDER AGAINST THE BENEFICIARY FOR SUPPORT OR MAINTENANCE OF THE
5 BENEFICIARY'S CHILD, SPOUSE OR FORMER SPOUSE.

6 2. THE COURT SHALL DIRECT THE TRUSTEE TO PAY TO THE CHILD, SPOUSE OR
7 FORMER SPOUSE AN AMOUNT AS IS EQUITABLE UNDER THE CIRCUMSTANCES BUT NOT MORE
8 THAN THE AMOUNT THE TRUSTEE WOULD HAVE BEEN REQUIRED TO DISTRIBUTE TO OR FOR
9 THE BENEFIT OF THE BENEFICIARY HAD THE TRUSTEE COMPLIED WITH THE STANDARD OR
10 NOT ABUSED THE DISCRETION.

11 C. THIS SECTION DOES NOT LIMIT THE RIGHT OF A BENEFICIARY TO MAINTAIN
12 A JUDICIAL PROCEEDING AGAINST A TRUSTEE FOR AN ABUSE OF DISCRETION OR FAILURE
13 TO COMPLY WITH A STANDARD FOR DISTRIBUTION.

14 D. IN THIS SECTION, "CHILD" INCLUDES ANY PERSON FOR WHOM AN ORDER OR
15 JUDGMENT FOR CHILD SUPPORT HAS BEEN ENTERED IN THIS OR ANOTHER STATE.

16 14-10505. Creditor's claim against settlor

17 A. WHETHER OR NOT THE TERMS OF A TRUST CONTAIN A SPENDTHRIFT
18 PROVISION, THE FOLLOWING RULES APPLY:

19 1. DURING THE LIFETIME OF THE SETTLOR, THE PROPERTY OF A REVOCABLE
20 TRUST IS SUBJECT TO CLAIMS OF THE SETTLOR'S CREDITORS.

21 2. WITH RESPECT TO AN IRREVOCABLE TRUST, A CREDITOR OR ASSIGNEE OF
22 THE SETTLOR MAY REACH THE MAXIMUM AMOUNT THAT CAN BE DISTRIBUTED TO OR FOR
23 THE SETTLOR'S BENEFIT. IF A TRUST HAS MORE THAN ONE SETTLOR, THE AMOUNT THE
24 CREDITOR OR ASSIGNEE OF A PARTICULAR SETTLOR MAY REACH MAY NOT EXCEED THE
25 SETTLOR'S INTEREST IN THE PORTION OF THE TRUST ATTRIBUTABLE TO THAT SETTLOR'S
26 CONTRIBUTION.

27 3. AFTER THE DEATH OF A SETTLOR, AND SUBJECT TO THE SETTLOR'S RIGHT
28 TO DIRECT THE SOURCE FROM WHICH LIABILITIES WILL BE PAID, THE PROPERTY OF A
29 TRUST THAT WAS REVOCABLE AT THE SETTLOR'S DEATH IS SUBJECT TO CLAIMS OF THE
30 SETTLOR'S CREDITORS, COSTS OF ADMINISTRATION OF THE SETTLOR'S ESTATE, THE
31 EXPENSES OF THE SETTLOR'S FUNERAL AND DISPOSAL OF REMAINS AND STATUTORY
32 ALLOWANCES TO A SURVIVING SPOUSE AND CHILDREN TO THE EXTENT THE SETTLOR'S
33 PROBATE ESTATE IS INADEQUATE TO SATISFY THOSE CLAIMS, COSTS, EXPENSES AND
34 ALLOWANCES.

35 B. FOR THE PURPOSES OF THIS SECTION:

36 1. DURING THE PERIOD THE POWER MAY BE EXERCISED, THE HOLDER OF A POWER
37 OF WITHDRAWAL IS TREATED IN THE SAME MANNER AS THE SETTLOR OF A REVOCABLE
38 TRUST TO THE EXTENT OF THE PROPERTY SUBJECT TO THE POWER.

39 2. ON THE LAPSE, RELEASE OR WAIVER OF THE POWER, THE HOLDER IS TREATED
40 AS THE SETTLOR OF THE TRUST ONLY TO THE EXTENT THE VALUE OF THE PROPERTY
41 AFFECTED BY THE LAPSE, RELEASE OR WAIVER EXCEEDS THE GREATER OF THE AMOUNT
42 SPECIFIED IN SECTION 2041(b)(2) OR 2514(e) OF THE INTERNAL REVENUE CODE OF
43 1986, OR SECTION 2503(b) OF THE INTERNAL REVENUE CODE OF 1986, IN EACH CASE
44 AS IN EFFECT ON JANUARY 1, 2004, OR AS LATER AMENDED.

1 C. FOR THE PURPOSES OF THIS SECTION, A TRUST SETTLED OR ESTABLISHED
2 BY A CORPORATION, PROFESSIONAL CORPORATION, PARTNERSHIP, GOVERNMENTAL ENTITY,
3 TRUST, FOUNDATION OR OTHER ENTITY IS NOT DEEMED TO BE SETTLED OR ESTABLISHED
4 BY ITS DIRECTORS, OFFICERS, SHAREHOLDERS, PARTNERS, EMPLOYEES, BENEFICIARIES
5 OR AGENTS.

6 D. FOR THE PURPOSES OF THIS SECTION, AMOUNTS CONTRIBUTED TO A TRUST
7 BY A CORPORATION, PROFESSIONAL CORPORATION, PARTNERSHIP, GOVERNMENTAL ENTITY,
8 TRUST, FOUNDATION OR OTHER ENTITY ARE NOT DEEMED TO HAVE BEEN CONTRIBUTED BY
9 ITS DIRECTORS, OFFICERS, SHAREHOLDERS, PARTNERS, EMPLOYEES, BENEFICIARIES OR
10 AGENTS. POWERS, DUTIES OR RESPONSIBILITIES GRANTED TO OR RESERVED BY THE
11 SETTLOR PURSUANT TO THE TRUST AND ANY ACTIONS OR OMISSIONS TAKEN PURSUANT TO
12 THE TRUST ARE DEEMED TO BE THE POWERS, RESPONSIBILITIES, DUTIES, ACTIONS OR
13 OMISSIONS OF THE SETTLOR AND NOT THOSE OF ITS DIRECTORS, OFFICERS,
14 SHAREHOLDERS, PARTNERS, EMPLOYEES, BENEFICIARIES OR AGENTS.

15 E. SUBSECTIONS C AND D DO NOT APPLY TO:

16 1. A TRUST THAT HAS NO VALID BUSINESS PURPOSE AND THAT HAS AS ITS
17 PRINCIPAL PURPOSE THE EVASION OF THE CLAIMS OF THE CREDITORS OF THE PERSONS
18 OR ENTITIES LISTED IN THOSE SUBSECTIONS.

19 2. A TRUST THAT WOULD BE TREATED AS A GRANTOR TRUST PURSUANT TO
20 SECTIONS 671 THROUGH 679 OF THE INTERNAL REVENUE CODE OF 1986 AS IN EFFECT
21 ON JANUARY 1, 2004, OR AS LATER AMENDED. THIS PARAGRAPH DOES NOT APPLY TO
22 A QUALIFIED SUBCHAPTER S TRUST THAT IS TREATED AS A GRANTOR TRUST SOLELY BY
23 APPLICATION OF SECTION 1361(D) OF THE INTERNAL REVENUE CODE OF 1986 AS IN
24 EFFECT ON JANUARY 1, 2004, OR AS LATER AMENDED.

25 14-10506. Overdue distribution

26 WHETHER OR NOT A TRUST CONTAINS A SPENDTHRIFT PROVISION, A CREDITOR OR
27 ASSIGNEE OF A BENEFICIARY MAY REACH A MANDATORY DISTRIBUTION OF INCOME OR
28 PRINCIPAL, INCLUDING A DISTRIBUTION ON TERMINATION OF THE TRUST, IF THE
29 TRUSTEE HAS NOT MADE THE DISTRIBUTION TO THE BENEFICIARY WITHIN A REASONABLE
30 TIME AFTER THE MANDATED DISTRIBUTION DATE.

31 14-10507. Personal obligations of trustee

32 TRUST PROPERTY IS NOT SUBJECT TO PERSONAL OBLIGATIONS OF THE TRUSTEE,
33 EVEN IF THE TRUSTEE BECOMES INSOLVENT OR BANKRUPT.

34 ARTICLE 6. REVOCABLE TRUSTS

35 14-10601. Blank

36 14-10602. Revocation or amendment of revocable trust

37 A. UNLESS THE TERMS OF A TRUST EXPRESSLY PROVIDE THAT THE TRUST IS
38 IRREVOCABLE, THE SETTLOR MAY REVOKE OR AMEND THE TRUST. THIS SUBSECTION DOES
39 NOT APPLY TO A TRUST CREATED UNDER AN INSTRUMENT EXECUTED BEFORE JANUARY 1,
40 2004. THIS SUBSECTION APPLIES ONLY TO ANY TRUST THAT BECOMES IRREVOCABLE ON
41 OR AFTER JANUARY 1, 2004.

42 B. IF A REVOCABLE TRUST IS CREATED OR FUNDED BY MORE THAN ONE SETTLOR:

43 1. TO THE EXTENT THE TRUST CONSISTS OF COMMUNITY PROPERTY, THE TRUST
44 MAY BE REVOKED BY EITHER SPOUSE ACTING ALONE BUT MAY BE AMENDED ONLY BY JOINT
45 ACTION OF BOTH SPOUSES.

1 2. TO THE EXTENT THE TRUST CONSISTS OF PROPERTY OTHER THAN COMMUNITY
2 PROPERTY, EACH SETTLOR MAY REVOKE OR AMEND THE TRUST WITH REGARD THE PORTION
3 OF THE TRUST PROPERTY ATTRIBUTABLE TO THAT SETTLOR'S CONTRIBUTION.

4 C. THE SETTLOR MAY REVOKE OR AMEND A REVOCABLE TRUST EITHER:

5 1. BY SUBSTANTIAL COMPLIANCE WITH A METHOD PROVIDED IN THE TERMS OF
6 THE TRUST.

7 2. IF THE TERMS OF THE TRUST DO NOT PROVIDE A METHOD OR THE METHOD
8 PROVIDED IN THE TERMS IS NOT EXPRESSLY MADE EXCLUSIVE, BY EITHER:

9 (a) A LATER WILL OR CODICIL THAT EXPRESSLY REFERS TO THE TRUST OR
10 SPECIFICALLY DEVISES PROPERTY THAT WOULD OTHERWISE HAVE PASSED ACCORDING TO
11 THE TERMS OF THE TRUST.

12 (b) ANY OTHER METHOD MANIFESTING CLEAR AND CONVINCING EVIDENCE OF THE
13 SETTLOR'S INTENT.

14 D. ON REVOCATION OF A REVOCABLE TRUST, THE TRUSTEE SHALL DELIVER THE
15 TRUST PROPERTY AS THE SETTLOR DIRECTS.

16 E. A SETTLOR'S POWERS WITH RESPECT TO REVOCATION, AMENDMENT OR
17 DISTRIBUTION OF TRUST PROPERTY MAY BE EXERCISED BY AN AGENT UNDER A POWER OF
18 ATTORNEY ONLY TO THE EXTENT EXPRESSLY AUTHORIZED BY THE TERMS OF THE TRUST
19 OR, IF THE TERMS OF THE TRUST DO NOT PROHIBIT AN AGENT FROM EXERCISING POWERS
20 ON BEHALF OF THE SETTLOR, TO THE EXTENT EXPRESSLY AUTHORIZED UNDER THE POWER
21 OF ATTORNEY. IF AN AGENT IS NOT SO AUTHORIZED AND THE TERMS OF THE TRUST DO
22 NOT PROHIBIT A CONSERVATOR FROM EXERCISING POWERS ON BEHALF OF A SETTLOR, A
23 SETTLOR'S POWER TO REVOKE, AMEND OR DISTRIBUTE MAY BE EXERCISED BY THE
24 SETTLOR'S CONSERVATOR WITH THE APPROVAL OF THE COURT SUPERVISING THE
25 CONSERVATORSHIP OR BY THE SETTLOR'S GUARDIAN WITH THE APPROVAL OF THE COURT
26 SUPERVISING THE GUARDIANSHIP IF AN AGENT IS NOT SO AUTHORIZED AND A
27 CONSERVATOR HAS NOT BEEN APPOINTED.

28 F. A TRUSTEE WHO DOES NOT KNOW THAT A TRUST HAS BEEN REVOKED OR
29 AMENDED IS NOT LIABLE TO THE SETTLOR OR SETTLOR'S SUCCESSORS IN INTEREST FOR
30 DISTRIBUTIONS MADE AND OTHER ACTIONS TAKEN ON THE ASSUMPTION THAT THE TRUST
31 HAD NOT BEEN AMENDED OR REVOKED.

32 14-10603. Settlor's powers; powers of withdrawal

33 A. WHILE A TRUST IS REVOCABLE AND THE SETTLOR HAS CAPACITY TO REVOKE
34 THE TRUST, RIGHTS OF THE BENEFICIARIES ARE SUBJECT TO THE CONTROL OF, AND THE
35 DUTIES OF THE TRUSTEE ARE OWED EXCLUSIVELY TO, THE SETTLOR.

36 B. IF A REVOCABLE TRUST HAS MORE THAN ONE SETTLOR, THE DUTIES OF THE
37 TRUSTEE ARE OWED TO ALL OF THE SETTLORS HAVING CAPACITY TO REVOKE THE TRUST.

38 C. DURING THE PERIOD THE POWER MAY BE EXERCISED, THE HOLDER OF A POWER
39 OF WITHDRAWAL HAS THE RIGHTS OF A SETTLOR OF A REVOCABLE TRUST UNDER THIS
40 SECTION TO THE EXTENT OF THE PROPERTY SUBJECT TO THE POWER.

41 14-10604. Limitation on actions contesting validity or
42 revocable trust; distribution of trust property

43 A. A PERSON MAY COMMENCE A JUDICIAL PROCEEDING TO CONTEST THE VALIDITY
44 OF A TRUST THAT WAS REVOCABLE AT THE SETTLOR'S DEATH WITHIN THE EARLIER OF:

45 1. TWO YEARS AFTER THE SETTLOR'S DEATH.

1 2. FOUR MONTHS AFTER THE TRUSTEE SENT THE PERSON A COPY OF THE TRUST
2 INSTRUMENT AND A NOTICE INFORMING THE PERSON OF THE TRUST'S EXISTENCE, OF THE
3 TRUSTEE'S NAME AND ADDRESS AND OF THE TIME ALLOWED FOR COMMENCING A
4 PROCEEDING.

5 B. ON THE DEATH OF THE SETTLOR OF A TRUST THAT WAS REVOCABLE AT THE
6 SETTLOR'S DEATH, THE TRUSTEE MAY PROCEED TO DISTRIBUTE THE TRUST PROPERTY IN
7 ACCORDANCE WITH THE TERMS OF THE TRUST. THE TRUSTEE IS NOT SUBJECT TO
8 LIABILITY FOR DOING SO UNLESS EITHER:

9 1. THE TRUSTEE KNOWS OF A PENDING JUDICIAL PROCEEDING CONTESTING THE
10 VALIDITY OF THE TRUST.

11 2. A POTENTIAL CONTESTANT HAS NOTIFIED THE TRUSTEE IN WRITING OF A
12 POSSIBLE JUDICIAL PROCEEDING TO CONTEST THE TRUST AND A JUDICIAL PROCEEDING
13 IS COMMENCED WITHIN SIXTY DAYS AFTER THE CONTESTANT SENT THE NOTIFICATION.

14 C. A BENEFICIARY OF A TRUST THAT IS DETERMINED TO HAVE BEEN INVALID
15 IS LIABLE TO RETURN ANY DISTRIBUTION RECEIVED.

16 ARTICLE 7. OFFICE OF TRUSTEE

17 14-10701. Accepting or declining trusteeship

18 A. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION C, A PERSON DESIGNATED
19 AS TRUSTEE ACCEPTS THE TRUSTEESHIP EITHER:

20 1. BY SUBSTANTIALLY COMPLYING WITH A METHOD OF ACCEPTANCE PROVIDED IN
21 THE TERMS OF THE TRUST.

22 2. IF THE TERMS OF THE TRUST DO NOT PROVIDE A METHOD OR THE METHOD
23 PROVIDED IN THE TERMS IS NOT EXPRESSLY MADE EXCLUSIVE, BY ACCEPTING DELIVERY
24 OF THE TRUST PROPERTY, EXERCISING POWERS OR PERFORMING DUTIES AS TRUSTEE OR
25 OTHERWISE INDICATING ACCEPTANCE OF THE TRUSTEESHIP.

26 B. A PERSON DESIGNATED AS TRUSTEE WHO HAS NOT YET ACCEPTED THE
27 TRUSTEESHIP MAY REJECT THE TRUSTEESHIP. A DESIGNATED TRUSTEE WHO DOES NOT
28 ACCEPT THE TRUSTEESHIP WITHIN A REASONABLE TIME AFTER KNOWING OF THE
29 DESIGNATION IS DEEMED TO HAVE REJECTED THE TRUSTEESHIP.

30 C. A PERSON DESIGNATED AS TRUSTEE, WITHOUT ACCEPTING THE TRUSTEESHIP,
31 MAY:

32 1. ACT TO PRESERVE THE TRUST PROPERTY IF, WITHIN A REASONABLE TIME
33 AFTER ACTING, THE PERSON SENDS A REJECTION OF THE TRUSTEESHIP TO THE SETTLOR
34 OR, IF THE SETTLOR IS DEAD OR LACKS CAPACITY, TO A QUALIFIED BENEFICIARY.

35 2. INSPECT OR INVESTIGATE TRUST PROPERTY TO DETERMINE POTENTIAL
36 LIABILITY UNDER ENVIRONMENTAL OR OTHER LAW OR FOR ANY OTHER PURPOSE.

37 14-10702. Trustee's bond

38 A. A TRUSTEE SHALL GIVE BOND TO SECURE PERFORMANCE OF THE TRUSTEE'S
39 DUTIES ONLY IF THE COURT FINDS THAT A BOND IS NEEDED TO PROTECT THE INTERESTS
40 OF THE BENEFICIARIES OR IS REQUIRED BY THE TERMS OF THE TRUST AND THE COURT
41 HAS NOT DISPENSED WITH THE REQUIREMENT.

42 B. THE COURT MAY SPECIFY THE AMOUNT OF A BOND, ITS LIABILITIES AND
43 WHETHER SURETIES ARE NECESSARY. THE COURT MAY MODIFY OR TERMINATE A BOND AT
44 ANY TIME.

1 C. NOTWITHSTANDING THE TERMS OF THE TRUST, THE FOLLOWING ARE NOT
2 REQUIRED TO GIVE A BOND:

- 3 1. A NATIONAL BANKING ASSOCIATION.
- 4 2. A HOLDER OF A BANKING PERMIT UNDER THE LAWS OF THIS STATE.
- 5 3. A SAVINGS AND LOAN ASSOCIATION AUTHORIZED TO CONDUCT TRUST BUSINESS
6 IN THIS STATE.
- 7 4. A TITLE INSURANCE COMPANY QUALIFIED TO DO BUSINESS UNDER THE LAWS
8 OF THIS STATE.
- 9 5. A TRUST COMPANY HOLDING A CERTIFICATE TO ENGAGE IN TRUST BUSINESS
10 FROM THE STATE SUPERINTENDENT OF BANKS.
- 11 6. THE PUBLIC FIDUCIARY.

12 14-10703. Cotrustees

13 A. COTRUSTEES WHO ARE UNABLE TO REACH A UNANIMOUS DECISION MAY ACT BY
14 MAJORITY DECISION.

15 B. IF A VACANCY OCCURS IN A COTRUSTEESHIP, THE REMAINING COTRUSTEES
16 MAY ACT FOR THE TRUST.

17 C. A COTRUSTEE MUST PARTICIPATE IN THE PERFORMANCE OF A TRUSTEE'S
18 FUNCTION UNLESS THE COTRUSTEE IS UNAVAILABLE TO PERFORM THE FUNCTION BECAUSE
19 OF ABSENCE, ILLNESS, DISQUALIFICATION UNDER OTHER LAW OR OTHER TEMPORARY
20 INCAPACITY OR THE COTRUSTEE HAS PROPERLY DELEGATED THE PERFORMANCE OF THE
21 FUNCTION TO ANOTHER TRUSTEE.

22 D. IF A COTRUSTEE IS UNAVAILABLE TO PERFORM DUTIES BECAUSE OF ABSENCE,
23 ILLNESS, DISQUALIFICATION UNDER OTHER LAW OR OTHER TEMPORARY INCAPACITY, AND
24 PROMPT ACTION IS NECESSARY TO ACHIEVE THE PURPOSES OF THE TRUST OR TO AVOID
25 INJURY TO THE TRUST PROPERTY, THE REMAINING COTRUSTEE OR A MAJORITY OF THE
26 REMAINING COTRUSTEES MAY ACT FOR THE TRUST.

27 E. A TRUSTEE MAY DELEGATE TO A COTRUSTEE THE PERFORMANCE OF A FUNCTION
28 UNLESS THE TERMS OF THE TRUST PROVIDE THAT THE TRUSTEES PERFORM
29 JOINTLY. UNLESS A DELEGATION WAS IRREVOCABLE, A TRUSTEE MAY REVOKE A
30 DELEGATION PREVIOUSLY MADE.

31 F. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION G, A TRUSTEE WHO DOES
32 NOT JOIN IN AN ACTION OF ANOTHER TRUSTEE IS NOT LIABLE FOR THE ACTION.

33 G. EACH TRUSTEE SHALL EXERCISE REASONABLE CARE TO:

- 34 1. PREVENT A COTRUSTEE FROM COMMITTING A SERIOUS BREACH OF TRUST.
- 35 2. COMPEL A COTRUSTEE TO REDRESS A SERIOUS BREACH OF TRUST.

36 H. A DISSENTING TRUSTEE WHO JOINS IN AN ACTION AT THE DIRECTION OF THE
37 MAJORITY OF THE TRUSTEES AND WHO NOTIFIED ANY COTRUSTEE OF THE DISSENT AT OR
38 BEFORE THE TIME OF THE ACTION IS NOT LIABLE FOR THE ACTION UNLESS THE ACTION
39 IS A SERIOUS BREACH OF TRUST.

40 14-10704. Vacancy in trusteeship; appointment of successor

41 A. A VACANCY IN A TRUSTEESHIP OCCURS IF:

- 42 1. A PERSON DESIGNATED AS TRUSTEE REJECTS THE TRUSTEESHIP.
- 43 2. A PERSON DESIGNATED AS TRUSTEE CANNOT BE IDENTIFIED OR DOES NOT
44 EXIST.
- 45 3. A TRUSTEE RESIGNS.

1 4. A TRUSTEE IS DISQUALIFIED OR REMOVED.

2 5. A TRUSTEE DIES.

3 6. A GUARDIAN OR CONSERVATOR IS APPOINTED FOR AN INDIVIDUAL SERVING
4 AS TRUSTEE.

5 B. IF ONE OR MORE COTRUSTEES REMAIN IN OFFICE, A VACANCY IN A
6 TRUSTEESHIP NEED NOT BE FILLED. A VACANCY IN A TRUSTEESHIP MUST BE FILLED
7 IF THE TRUST HAS NO REMAINING TRUSTEE.

8 C. A VACANCY IN A TRUSTEESHIP OF A NONCHARITABLE TRUST THAT IS
9 REQUIRED TO BE FILLED MUST BE FILLED IN THE FOLLOWING ORDER OF PRIORITY:

10 1. BY A PERSON DESIGNATED IN THE TERMS OF THE TRUST TO ACT AS
11 SUCCESSOR TRUSTEE.

12 2. BY A PERSON APPOINTED BY UNANIMOUS AGREEMENT OF THE QUALIFIED
13 BENEFICIARIES.

14 3. BY A PERSON APPOINTED BY THE COURT.

15 D. A VACANCY IN A TRUSTEESHIP OF A CHARITABLE TRUST THAT IS REQUIRED
16 TO BE FILLED MUST BE FILLED IN THE FOLLOWING ORDER OF PRIORITY:

17 1. BY A PERSON DESIGNATED IN THE TERMS OF THE TRUST TO ACT AS
18 SUCCESSOR TRUSTEE.

19 2. BY A PERSON SELECTED BY THE CHARITABLE ORGANIZATIONS EXPRESSLY
20 DESIGNATED TO RECEIVE DISTRIBUTIONS UNDER THE TERMS OF THE TRUST IF THE
21 ATTORNEY GENERAL CONCURS IN THE SELECTION.

22 3. BY A PERSON APPOINTED BY THE COURT.

23 E. WHETHER OR NOT A VACANCY IN A TRUSTEESHIP EXISTS OR IS REQUIRED TO
24 BE FILLED, THE COURT MAY APPOINT AN ADDITIONAL TRUSTEE OR SPECIAL FIDUCIARY
25 WHENEVER THE COURT CONSIDERS THE APPOINTMENT NECESSARY FOR THE ADMINISTRATION
26 OF THE TRUST.

27 14-10705. Resignation of trustee

28 A. A TRUSTEE MAY RESIGN EITHER:

29 1. ON AT LEAST THIRTY DAYS' NOTICE TO THE QUALIFIED BENEFICIARIES, THE
30 SETTLOR, IF LIVING, AND ALL COTRUSTEES.

31 2. WITH THE APPROVAL OF THE COURT.

32 B. IN APPROVING A RESIGNATION, THE COURT MAY ISSUE ORDERS AND IMPOSE
33 CONDITIONS REASONABLY NECESSARY FOR THE PROTECTION OF THE TRUST PROPERTY.

34 C. ANY LIABILITY OF A RESIGNING TRUSTEE OR OF ANY SURETIES ON THE
35 TRUSTEE'S BOND FOR ACTS OR OMISSIONS OF THE TRUSTEE IS NOT DISCHARGED OR
36 AFFECTED BY THE TRUSTEE'S RESIGNATION.

37 14-10706. Removal of trustee

38 A. THE SETTLOR, A COTRUSTEE OR A BENEFICIARY MAY REQUEST THE COURT TO
39 REMOVE A TRUSTEE OR A TRUSTEE MAY BE REMOVED BY THE COURT ON ITS OWN
40 INITIATIVE.

41 B. THE COURT MAY REMOVE A TRUSTEE IF:

42 1. THE TRUSTEE HAS COMMITTED A SERIOUS BREACH OF TRUST.

43 2. LACK OF COOPERATION AMONG COTRUSTEES SUBSTANTIALLY IMPAIRS THE
44 ADMINISTRATION OF THE TRUST.

1 3. BECAUSE OF UNFITNESS, UNWILLINGNESS OR PERSISTENT FAILURE OF THE
2 TRUSTEE TO ADMINISTER THE TRUST EFFECTIVELY, THE COURT DETERMINES THAT
3 REMOVAL OF THE TRUSTEE BEST SERVES THE INTERESTS OF THE BENEFICIARIES.

4 4. THERE HAS BEEN A SUBSTANTIAL CHANGE OF CIRCUMSTANCES OR REMOVAL IS
5 REQUESTED BY ALL OF THE QUALIFIED BENEFICIARIES, THE COURT FINDS THAT REMOVAL
6 OF THE TRUSTEE BEST SERVES THE INTERESTS OF ALL OF THE BENEFICIARIES AND IS
7 NOT INCONSISTENT WITH A MATERIAL PURPOSE OF THE TRUST AND A SUITABLE
8 COTRUSTEE OR SUCCESSOR TRUSTEE IS AVAILABLE.

9 C. PENDING A FINAL DECISION ON A REQUEST TO REMOVE A TRUSTEE, OR IN
10 LIEU OF OR IN ADDITION TO REMOVING A TRUSTEE, THE COURT MAY ORDER APPROPRIATE
11 RELIEF UNDER SECTION 14-11001, SUBSECTION B AS MAY BE NECESSARY TO PROTECT
12 THE TRUST PROPERTY OR THE INTERESTS OF THE BENEFICIARIES.

13 14-10707. Delivery of property by former trustee

14 A. UNLESS A COTRUSTEE REMAINS IN OFFICE OR THE COURT OTHERWISE ORDERS,
15 AND UNTIL THE TRUST PROPERTY IS DELIVERED TO A SUCCESSOR TRUSTEE OR OTHER
16 PERSON ENTITLED TO IT, A TRUSTEE WHO HAS RESIGNED OR BEEN REMOVED HAS THE
17 DUTIES OF A TRUSTEE AND THE POWERS NECESSARY TO PROTECT THE TRUST PROPERTY.

18 B. A TRUSTEE WHO HAS RESIGNED OR BEEN REMOVED SHALL PROCEED
19 EXPEDITIOUSLY TO DELIVER THE TRUST PROPERTY WITHIN THE TRUSTEE'S POSSESSION
20 TO THE COTRUSTEE, SUCCESSOR TRUSTEE OR OTHER PERSON ENTITLED TO IT.

21 14-10708. Compensation of trustee

22 A. IF THE TERMS OF A TRUST DO NOT SPECIFY THE TRUSTEE'S COMPENSATION,
23 A TRUSTEE IS ENTITLED TO COMPENSATION THAT IS REASONABLE UNDER THE
24 CIRCUMSTANCES.

25 B. IF THE TERMS OF A TRUST SPECIFY THE TRUSTEE'S COMPENSATION OR REFER
26 TO ANOTHER ASCERTAINABLE SOURCE FOR DETERMINING THAT COMPENSATION, THE
27 TRUSTEE IS ENTITLED TO BE COMPENSATED AS SPECIFIED, BUT THE COURT MAY ALLOW
28 MORE OR LESS COMPENSATION IF EITHER:

29 1. THE DUTIES OF THE TRUSTEE ARE SUBSTANTIALLY DIFFERENT FROM THOSE
30 CONTEMPLATED WHEN THE TRUST WAS CREATED.

31 2. THE COMPENSATION SPECIFIED BY THE TERMS OF THE TRUST WOULD BE
32 UNREASONABLY LOW OR HIGH.

33 14-10709. Reimbursement of expenses

34 A. A TRUSTEE IS ENTITLED TO BE REIMBURSED OUT OF THE TRUST PROPERTY,
35 WITH REASONABLE INTEREST, FOR:

36 1. EXPENSES THAT WERE PROPERLY INCURRED IN THE ADMINISTRATION OF THE
37 TRUST.

38 2. TO THE EXTENT NECESSARY TO PREVENT UNJUST ENRICHMENT OF THE TRUST,
39 EXPENSES THAT WERE NOT PROPERLY INCURRED IN THE ADMINISTRATION OF THE TRUST.

40 B. AN ADVANCE BY THE TRUSTEE OF MONEY FOR THE PROTECTION OF THE TRUST
41 GIVES RISE TO A LIEN AGAINST TRUST PROPERTY TO SECURE REIMBURSEMENT WITH
42 REASONABLE INTEREST.

ARTICLE 8. DUTIES AND POWERS OF TRUSTEE

14-10801. Duty to administer trust

ON ACCEPTANCE OF A TRUSTEESHIP, THE TRUSTEE SHALL ADMINISTER THE TRUST IN GOOD FAITH, IN ACCORDANCE WITH ITS TERMS AND PURPOSES AND THE INTERESTS OF THE BENEFICIARIES AND IN ACCORDANCE WITH THIS CHAPTER.

14-10802. Duty of loyalty

A. A TRUSTEE SHALL ADMINISTER THE TRUST SOLELY IN THE INTERESTS OF THE BENEFICIARIES.

B. SUBJECT TO THE RIGHTS OF PERSONS DEALING WITH OR ASSISTING THE TRUSTEE AS PROVIDED IN SECTION 14-11012, A SALE, ENCUMBRANCE OR OTHER TRANSACTION INVOLVING THE INVESTMENT OR MANAGEMENT OF TRUST PROPERTY ENTERED INTO BY THE TRUSTEE FOR THE TRUSTEE'S OWN PERSONAL ACCOUNT OR THAT IS OTHERWISE AFFECTED BY A CONFLICT BETWEEN THE TRUSTEE'S FIDUCIARY AND PERSONAL INTERESTS IS VOIDABLE BY A BENEFICIARY AFFECTED BY THE TRANSACTION UNLESS EITHER:

1. THE TRANSACTION WAS AUTHORIZED BY THE TERMS OF THE TRUST.
2. THE TRANSACTION WAS APPROVED BY THE COURT.
3. THE BENEFICIARY DID NOT COMMENCE A JUDICIAL PROCEEDING WITHIN THE TIME ALLOWED BY SECTION 14-11005.
4. THE BENEFICIARY CONSENTED TO THE TRUSTEE'S CONDUCT, RATIFIED THE TRANSACTION OR RELEASED THE TRUSTEE IN COMPLIANCE WITH SECTION 14-11009.
5. THE TRANSACTION INVOLVES A CONTRACT ENTERED INTO OR CLAIM ACQUIRED BY THE TRUSTEE BEFORE THE PERSON BECAME OR CONTEMPLATED BECOMING TRUSTEE.

C. A SALE, ENCUMBRANCE OR OTHER TRANSACTION INVOLVING THE INVESTMENT OR MANAGEMENT OF TRUST PROPERTY IS PRESUMED TO BE AFFECTED BY A CONFLICT BETWEEN PERSONAL AND FIDUCIARY INTERESTS IF IT IS ENTERED INTO BY THE TRUSTEE WITH:

1. THE TRUSTEE'S SPOUSE.
2. THE TRUSTEE'S DESCENDANTS, SIBLINGS, PARENTS OR THEIR SPOUSES.
3. AN AGENT OR ATTORNEY OF THE TRUSTEE.
4. A CORPORATION OR OTHER PERSON OR ENTERPRISE IN WHICH THE TRUSTEE, OR A PERSON THAT OWNS A SIGNIFICANT INTEREST IN THE TRUSTEE, HAS AN INTEREST THAT MIGHT AFFECT THE TRUSTEE'S BEST JUDGMENT.

D. A TRANSACTION BETWEEN A TRUSTEE AND A BENEFICIARY THAT DOES NOT CONCERN TRUST PROPERTY BUT THAT OCCURS DURING THE EXISTENCE OF THE TRUST OR WHILE THE TRUSTEE RETAINS SIGNIFICANT INFLUENCE OVER THE BENEFICIARY AND FROM WHICH THE TRUSTEE OBTAINS AN ADVANTAGE IS VOIDABLE BY THE BENEFICIARY UNLESS THE TRUSTEE ESTABLISHES THAT THE TRANSACTION WAS FAIR TO THE BENEFICIARY.

E. A TRANSACTION NOT CONCERNING TRUST PROPERTY IN WHICH THE TRUSTEE ENGAGES IN THE TRUSTEE'S INDIVIDUAL CAPACITY INVOLVES A CONFLICT BETWEEN PERSONAL AND FIDUCIARY INTERESTS IF THE TRANSACTION CONCERNS AN OPPORTUNITY PROPERLY BELONGING TO THE TRUST.

F. AN INVESTMENT BY A TRUSTEE IN SECURITIES OF AN INVESTMENT COMPANY OR INVESTMENT TRUST TO WHICH THE TRUSTEE, OR ITS AFFILIATE, PROVIDES SERVICES IN A CAPACITY OTHER THAN AS TRUSTEE IS NOT PRESUMED TO BE AFFECTED BY A

1 CONFLICT BETWEEN PERSONAL AND FIDUCIARY INTERESTS IF THE INVESTMENT COMPLIES
2 WITH THE PRUDENT INVESTOR RULE OF ARTICLE 9 OF THIS CHAPTER. THE TRUSTEE MAY
3 BE COMPENSATED BY THE INVESTMENT COMPANY OR INVESTMENT TRUST FOR PROVIDING
4 THOSE SERVICES OUT OF FEES CHARGED TO THE TRUST IF THE TRUSTEE AT LEAST
5 ANNUALLY NOTIFIES THE PERSONS ENTITLED UNDER SECTION 14-10813 TO RECEIVE A
6 COPY OF THE TRUSTEE'S ANNUAL REPORT THAT THE BANK OR TRUST COMPANY PROVIDES
7 SERVICES FOR AND RECEIVES FEES FROM THE INVESTMENT COMPANY OR INVESTMENT
8 TRUST. THIS NOTIFICATION MAY BE MADE IN THE TRUSTEE'S STATEMENTS OF THE
9 FIDUCIARY ACCOUNT.

10 G. IN VOTING SHARES OF STOCK OR IN EXERCISING POWERS OF CONTROL OVER
11 SIMILAR INTERESTS IN OTHER FORMS OF ENTERPRISE, THE TRUSTEE SHALL ACT IN THE
12 BEST INTERESTS OF THE BENEFICIARIES. IF THE TRUST IS THE SOLE OWNER OF A
13 CORPORATION OR OTHER FORM OF ENTERPRISE, THE TRUSTEE SHALL ELECT OR APPOINT
14 DIRECTORS OR OTHER MANAGERS WHO WILL MANAGE THE CORPORATION OR ENTERPRISE IN
15 THE BEST INTERESTS OF THE BENEFICIARIES.

16 H. THIS SECTION DOES NOT PRECLUDE THE FOLLOWING TRANSACTIONS, IF FAIR
17 TO THE BENEFICIARIES:

18 1. AN AGREEMENT BETWEEN A TRUSTEE AND A BENEFICIARY RELATING TO THE
19 APPOINTMENT OR COMPENSATION OF THE TRUSTEE.

20 2. PAYMENT OF REASONABLE COMPENSATION TO THE TRUSTEE.

21 3. A TRANSACTION BETWEEN A TRUST AND ANOTHER TRUST, DECEDENT'S ESTATE
22 OR CONSERVATORSHIP OF WHICH THE TRUSTEE IS A FIDUCIARY OR IN WHICH A
23 BENEFICIARY HAS AN INTEREST.

24 4. A DEPOSIT OF TRUST MONEY IN A REGULATED FINANCIAL SERVICE
25 INSTITUTION OPERATED BY THE TRUSTEE.

26 5. AN ADVANCE BY THE TRUSTEE OF MONEY FOR THE PROTECTION OF THE TRUST.

27 I. THE COURT MAY APPOINT A SPECIAL FIDUCIARY TO MAKE A DECISION WITH
28 RESPECT TO ANY PROPOSED TRANSACTION THAT MAY VIOLATE THIS SECTION IF ENTERED
29 INTO BY THE TRUSTEE.

30 14-10803. Impartiality

31 IF A TRUST HAS TWO OR MORE BENEFICIARIES, THE TRUSTEE SHALL ACT
32 IMPARTIALLY IN INVESTING, MANAGING AND DISTRIBUTING THE TRUST PROPERTY,
33 GIVING DUE REGARD TO THE BENEFICIARIES' RESPECTIVE INTERESTS.

34 14-10804. Prudent administration

35 A TRUSTEE SHALL ADMINISTER THE TRUST AS A PRUDENT PERSON WOULD, BY
36 CONSIDERING THE PURPOSES, TERMS, DISTRIBUTIONAL REQUIREMENTS AND OTHER
37 CIRCUMSTANCES OF THE TRUST. IN SATISFYING THIS STANDARD, THE TRUSTEE SHALL
38 EXERCISE REASONABLE CARE, SKILL AND CAUTION.

39 14-10805. Costs of administration

40 IN ADMINISTERING A TRUST, THE TRUSTEE MAY INCUR ONLY COSTS THAT ARE
41 REASONABLE IN RELATION TO THE TRUST PROPERTY, THE PURPOSES OF THE TRUST AND
42 THE SKILLS OF THE TRUSTEE.

1 14-10806. Trustee's skills

2 A TRUSTEE WHO HAS SPECIAL SKILLS OR EXPERTISE, OR WHO IS NAMED TRUSTEE
3 IN RELIANCE ON THE TRUSTEE'S REPRESENTATION THAT THE TRUSTEE HAS SPECIAL
4 SKILLS OR EXPERTISE, SHALL USE THOSE SPECIAL SKILLS OR EXPERTISE.

5 14-10807. Delegation by trustee

6 A. A TRUSTEE MAY DELEGATE DUTIES AND POWERS THAT A PRUDENT TRUSTEE OF
7 COMPARABLE SKILLS COULD PROPERLY DELEGATE UNDER THE CIRCUMSTANCES. THE
8 TRUSTEE SHALL EXERCISE REASONABLE CARE, SKILL AND CAUTION IN:

9 1. SELECTING AN AGENT.

10 2. ESTABLISHING THE SCOPE AND TERMS OF THE DELEGATION, CONSISTENT WITH
11 THE PURPOSES AND TERMS OF THE TRUST.

12 3. PERIODICALLY REVIEWING THE AGENT'S ACTIONS IN ORDER TO MONITOR THE
13 AGENT'S PERFORMANCE AND COMPLIANCE WITH THE TERMS OF THE DELEGATION.

14 B. IN PERFORMING A DELEGATED FUNCTION, AN AGENT OWES A DUTY TO THE
15 TRUST TO EXERCISE REASONABLE CARE TO COMPLY WITH THE TERMS OF THE DELEGATION.

16 C. A TRUSTEE WHO COMPLIES WITH SUBSECTION A IS NOT LIABLE TO THE
17 BENEFICIARIES OR TO THE TRUST FOR AN ACTION OF THE AGENT TO WHOM THE FUNCTION
18 WAS DELEGATED.

19 D. BY ACCEPTING A DELEGATION OF POWERS OR DUTIES FROM THE TRUSTEE OF
20 A TRUST THAT IS SUBJECT TO THE LAW OF THIS STATE, AN AGENT SUBMITS TO THE
21 JURISDICTION OF THE COURTS OF THIS STATE.

22 14-10808. Powers to direct

23 A. WHILE A TRUST IS REVOCABLE, THE TRUSTEE MAY FOLLOW A DIRECTION OF
24 THE SETTLOR THAT IS CONTRARY TO THE TERMS OF THE TRUST.

25 B. IF THE TERMS OF A TRUST CONFER ON A PERSON OTHER THAN THE SETTLOR
26 OF A REVOCABLE TRUST POWER TO DIRECT CERTAIN ACTIONS OF THE TRUSTEE, THE
27 TRUSTEE SHALL ACT IN ACCORDANCE WITH AN EXERCISE OF THE POWER UNLESS THE
28 ATTEMPTED EXERCISE IS MANIFESTLY CONTRARY TO THE TERMS OF THE TRUST OR THE
29 TRUSTEE KNOWS THE ATTEMPTED EXERCISE WOULD CONSTITUTE A SERIOUS BREACH OF A
30 FIDUCIARY DUTY THAT THE PERSON HOLDING THE POWER OWES TO THE BENEFICIARIES
31 OF THE TRUST.

32 C. THE TERMS OF A TRUST MAY CONFER ON A TRUSTEE OR OTHER PERSON A
33 POWER TO DIRECT THE MODIFICATION OR TERMINATION OF THE TRUST.

34 D. A PERSON, OTHER THAN A BENEFICIARY, WHO HOLDS A POWER TO DIRECT IS
35 PRESUMPTIVELY A FIDUCIARY WHO, AS SUCH, IS REQUIRED TO ACT IN GOOD FAITH WITH
36 REGARD TO THE PURPOSES OF THE TRUST AND THE INTERESTS OF THE BENEFICIARIES.
37 THE HOLDER OF A POWER TO DIRECT IS LIABLE FOR ANY LOSS THAT RESULTS FROM
38 BREACH OF A FIDUCIARY DUTY.

39 14-10809. Control and protection of trust property

40 A TRUSTEE SHALL TAKE REASONABLE STEPS TO TAKE CONTROL OF AND PROTECT
41 THE TRUST PROPERTY.

42 14-10810. Record keeping and identification of trust property

43 A. A TRUSTEE SHALL KEEP ADEQUATE RECORDS OF THE ADMINISTRATION OF THE
44 TRUST.

1 B. A TRUSTEE SHALL KEEP TRUST PROPERTY SEPARATE FROM THE TRUSTEE'S OWN
2 PROPERTY.

3 C. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION D, A TRUSTEE SHALL CAUSE
4 THE TRUST PROPERTY TO BE DESIGNATED SO THAT THE INTEREST OF THE TRUST, TO THE
5 EXTENT FEASIBLE, APPEARS IN RECORDS MAINTAINED BY A PARTY OTHER THAN A
6 TRUSTEE OR BENEFICIARY.

7 D. IF THE TRUSTEE MAINTAINS RECORDS CLEARLY INDICATING THE RESPECTIVE
8 INTERESTS, A TRUSTEE MAY INVEST AS A WHOLE THE PROPERTY OF TWO OR MORE
9 SEPARATE TRUSTS.

10 14-10811. Enforcement and defense of claims

11 A TRUSTEE SHALL TAKE REASONABLE STEPS TO ENFORCE CLAIMS OF THE TRUST
12 AND TO DEFEND CLAIMS AGAINST THE TRUST.

13 14-10812. Collecting trust property

14 A TRUSTEE SHALL TAKE REASONABLE STEPS TO COMPEL A FORMER TRUSTEE OR
15 OTHER PERSON TO DELIVER TRUST PROPERTY TO THE TRUSTEE AND TO REDRESS A BREACH
16 OF TRUST KNOWN TO THE TRUSTEE TO HAVE BEEN COMMITTED BY A FORMER TRUSTEE.

17 14-10813. Duty to inform and report

18 A. A TRUSTEE SHALL KEEP THE QUALIFIED BENEFICIARIES OF THE TRUST
19 REASONABLY INFORMED ABOUT THE ADMINISTRATION OF THE TRUST AND OF THE MATERIAL
20 FACTS NECESSARY FOR THEM TO PROTECT THEIR INTERESTS. UNLESS UNREASONABLE
21 UNDER THE CIRCUMSTANCES, A TRUSTEE SHALL PROMPTLY RESPOND TO A BENEFICIARY'S
22 REQUEST FOR INFORMATION RELATED TO THE ADMINISTRATION OF THE TRUST.

23 B. A TRUSTEE:

24 1. ON REQUEST OF A BENEFICIARY, SHALL PROMPTLY FURNISH TO THE
25 BENEFICIARY A COPY OF THE TRUST INSTRUMENT.

26 2. WITHIN SIXTY DAYS AFTER ACCEPTING A TRUSTEESHIP, SHALL NOTIFY THE
27 QUALIFIED BENEFICIARIES OF THE ACCEPTANCE AND OF THE TRUSTEE'S NAME, ADDRESS,
28 AND TELEPHONE NUMBER.

29 3. WITHIN SIXTY DAYS AFTER THE DATE THE TRUSTEE ACQUIRES KNOWLEDGE OF
30 THE CREATION OF AN IRREVOCABLE TRUST OR THE DATE THE TRUSTEE ACQUIRES
31 KNOWLEDGE THAT A FORMERLY REVOCABLE TRUST HAS BECOME IRREVOCABLE, WHETHER BY
32 THE DEATH OF THE SETTLOR OR OTHERWISE, SHALL NOTIFY THE QUALIFIED
33 BENEFICIARIES OF THE TRUST'S EXISTENCE, OF THE IDENTITY OF THE SETTLOR OR
34 SETTLORS, OF THE TRUSTEE'S NAME, ADDRESS AND TELEPHONE NUMBER, OF THE RIGHT
35 TO REQUEST A COPY OF THE TRUST INSTRUMENT AND OF THE RIGHT TO A TRUSTEE'S
36 REPORT AS PROVIDED IN SUBSECTION C.

37 4. SHALL NOTIFY THE QUALIFIED BENEFICIARIES NOT LESS THAN THIRTY DAYS
38 IN ADVANCE OF ANY CHANGE IN THE METHOD OR RATE OF THE TRUSTEE'S COMPENSATION.

39 C. A TRUSTEE SHALL SEND TO THE DISTRIBUTEES OR PERMISSIBLE
40 DISTRIBUTEES OF TRUST INCOME OR PRINCIPAL AND TO OTHER QUALIFIED OR
41 NONQUALIFIED BENEFICIARIES WHO REQUEST IT, AT LEAST ANNUALLY AND AT THE
42 TERMINATION OF THE TRUST, A REPORT OF THE TRUST PROPERTY, LIABILITIES,
43 RECEIPTS AND DISBURSEMENTS, INCLUDING THE SOURCE AND AMOUNT OF THE TRUSTEE'S
44 COMPENSATION, A LISTING OF THE TRUST ASSETS AND, IF FEASIBLE, THEIR
45 RESPECTIVE MARKET VALUES. ON A VACANCY IN A TRUSTEESHIP, UNLESS A COTRUSTEE

1 REMAINS IN OFFICE, A REPORT MUST BE SENT TO THE QUALIFIED BENEFICIARIES BY
2 THE FORMER TRUSTEE. A PERSONAL REPRESENTATIVE, CONSERVATOR OR GUARDIAN MAY
3 SEND THE QUALIFIED BENEFICIARIES A REPORT ON BEHALF OF A DECEASED OR
4 INCAPACITATED TRUSTEE.

5 D. A BENEFICIARY MAY WAIVE THE RIGHT TO A TRUSTEE'S REPORT OR OTHER
6 INFORMATION OTHERWISE REQUIRED TO BE FURNISHED UNDER THIS SECTION. A
7 BENEFICIARY, WITH RESPECT TO FUTURE REPORTS AND OTHER INFORMATION, MAY
8 WITHDRAW A WAIVER PREVIOUSLY GIVEN.

9 14-10814. Discretionary powers; tax savings

10 A. NOTWITHSTANDING THE BREADTH OF DISCRETION GRANTED TO A TRUSTEE IN
11 THE TERMS OF THE TRUST, INCLUDING THE USE OF TERMS SUCH AS ABSOLUTE, SOLE OR
12 UNCONTROLLED, THE TRUSTEE SHALL EXERCISE A DISCRETIONARY POWER IN GOOD FAITH
13 AND IN ACCORDANCE WITH THE TERMS AND PURPOSES OF THE TRUST AND THE INTERESTS
14 OF THE BENEFICIARIES.

15 B. SUBJECT TO SUBSECTION D, AND UNLESS THE TERMS OF THE TRUST
16 EXPRESSLY INDICATE THAT A RULE IN THIS SUBSECTION DOES NOT APPLY:

17 1. A PERSON OTHER THAN A SETTLOR WHO IS A BENEFICIARY AND TRUSTEE OF
18 A TRUST THAT CONFERS ON THE TRUSTEE A POWER TO MAKE DISCRETIONARY
19 DISTRIBUTIONS TO OR FOR THE TRUSTEE'S PERSONAL BENEFIT MAY EXERCISE THE POWER
20 ONLY IN ACCORDANCE WITH AN ASCERTAINABLE STANDARD RELATING TO THE TRUSTEE'S
21 INDIVIDUAL HEALTH, EDUCATION, SUPPORT OR MAINTENANCE WITHIN THE MEANING OF
22 SECTION 2041(b)(1)(A) OR 2514(c)(1) OF THE INTERNAL REVENUE CODE OF 1986, AS
23 IN EFFECT ON JANUARY 1, 2004, OR AS LATER AMENDED.

24 2. A TRUSTEE MAY NOT EXERCISE A POWER TO MAKE DISCRETIONARY
25 DISTRIBUTIONS TO SATISFY A LEGAL OBLIGATION OF SUPPORT THAT THE TRUSTEE
26 PERSONALLY OWES ANOTHER PERSON.

27 C. A POWER WHOSE EXERCISE IS LIMITED OR PROHIBITED BY SUBSECTION B MAY
28 BE EXERCISED BY A MAJORITY OF THE REMAINING TRUSTEES WHOSE EXERCISE OF THE
29 POWER IS NOT SO LIMITED OR PROHIBITED. IF THE POWER OF ALL TRUSTEES IS SO
30 LIMITED OR PROHIBITED, THE COURT MAY APPOINT A SPECIAL FIDUCIARY WITH
31 AUTHORITY TO EXERCISE THE POWER.

32 D. SUBSECTION B DOES NOT APPLY TO:

33 1. A POWER HELD BY THE SETTLOR'S SPOUSE WHO IS THE TRUSTEE OF A TRUST
34 FOR WHICH A MARITAL DEDUCTION, AS DEFINED IN SECTION 2056(b)(5) OR 2523(e)
35 OF THE INTERNAL REVENUE CODE OF 1986, AS IN EFFECT ON JANUARY 1, 2004, OR AS
36 LATER AMENDED, WAS PREVIOUSLY ALLOWED.

37 2. ANY TRUST DURING ANY PERIOD THAT THE TRUST MAY BE REVOKED OR
38 AMENDED BY ITS SETTLOR.

39 3. A TRUST IF CONTRIBUTIONS TO THE TRUST QUALIFY FOR THE ANNUAL
40 EXCLUSION UNDER SECTION 2503(c) OF THE INTERNAL REVENUE CODE OF 1986, AS IN
41 EFFECT ON JANUARY 1, 2004, OR AS LATER AMENDED.

42 14-10815. General powers of trustee

43 A. A TRUSTEE, WITHOUT AUTHORIZATION BY THE COURT, MAY EXERCISE:

44 1. POWERS CONFERRED BY THE TERMS OF THE TRUST.

45 2. EXCEPT AS LIMITED BY THE TERMS OF THE TRUST:

1 (a) ALL POWERS OVER THE TRUST PROPERTY THAT AN UNMARRIED COMPETENT
2 OWNER HAS OVER INDIVIDUALLY OWNED PROPERTY.

3 (b) ANY OTHER POWERS APPROPRIATE TO ACHIEVE THE PROPER INVESTMENT,
4 MANAGEMENT AND DISTRIBUTION OF THE TRUST PROPERTY.

5 (c) ANY OTHER POWERS CONFERRED BY THIS CHAPTER.

6 B. THE EXERCISE OF A POWER IS SUBJECT TO THE FIDUCIARY DUTIES
7 PRESCRIBED BY THIS ARTICLE.

8 14-10816. Specific powers of trustee

9 WITHOUT LIMITING THE AUTHORITY CONFERRED BY SECTION 14-10815, A TRUSTEE
10 MAY:

11 1. COLLECT TRUST PROPERTY AND ACCEPT OR REJECT ADDITIONS TO THE TRUST
12 PROPERTY FROM A SETTLOR OR ANY OTHER PERSON.

13 2. ACQUIRE OR SELL PROPERTY, FOR CASH OR ON CREDIT, AT PUBLIC OR
14 PRIVATE SALE.

15 3. EXCHANGE, PARTITION OR OTHERWISE CHANGE THE CHARACTER OF TRUST
16 PROPERTY.

17 4. DEPOSIT TRUST MONEY IN AN ACCOUNT IN A REGULATED FINANCIAL SERVICE
18 INSTITUTION.

19 5. BORROW MONEY, WITH OR WITHOUT SECURITY, AND MORTGAGE OR PLEDGE
20 TRUST PROPERTY FOR A PERIOD WITHIN OR EXTENDING BEYOND THE DURATION OF THE
21 TRUST.

22 6. WITH RESPECT TO AN INTEREST IN A PROPRIETORSHIP, PARTNERSHIP,
23 LIMITED LIABILITY COMPANY, BUSINESS TRUST, CORPORATION OR OTHER FORM OF
24 BUSINESS OR ENTERPRISE, CONTINUE THE BUSINESS OR OTHER ENTERPRISE AND TAKE
25 ANY ACTION THAT MAY BE TAKEN BY SHAREHOLDERS, MEMBERS OR PROPERTY OWNERS,
26 INCLUDING MERGING, DISSOLVING OR OTHERWISE CHANGING THE FORM OF BUSINESS
27 ORGANIZATION OR CONTRIBUTING ADDITIONAL CAPITAL.

28 7. WITH RESPECT TO STOCKS OR OTHER SECURITIES, EXERCISE THE RIGHTS OF
29 AN ABSOLUTE OWNER, INCLUDING THE RIGHT TO:

30 (a) VOTE, GIVE PROXIES TO VOTE, WITH OR WITHOUT POWER OF SUBSTITUTION,
31 OR ENTER INTO OR CONTINUE A VOTING TRUST AGREEMENT.

32 (b) HOLD A SECURITY IN THE NAME OF A NOMINEE OR IN OTHER FORM WITHOUT
33 DISCLOSURE OF THE TRUST SO THAT TITLE MAY PASS BY DELIVERY.

34 (c) PAY CALLS, ASSESSMENTS AND OTHER SUMS CHARGEABLE OR ACCRUING
35 AGAINST THE SECURITIES AND SELL OR EXERCISE STOCK SUBSCRIPTION OR CONVERSION
36 RIGHTS.

37 (d) DEPOSIT THE SECURITIES WITH A DEPOSITARY OR OTHER REGULATED
38 FINANCIAL SERVICE INSTITUTION.

39 8. WITH RESPECT TO AN INTEREST IN REAL PROPERTY, CONSTRUCT OR MAKE
40 ORDINARY OR EXTRAORDINARY REPAIRS TO, ALTERATIONS TO OR IMPROVEMENTS IN
41 BUILDINGS OR OTHER STRUCTURES, DEMOLISH IMPROVEMENTS, RAZE EXISTING OR ERECT
42 NEW PARTY WALLS OR BUILDINGS, SUBDIVIDE OR DEVELOP LAND, DEDICATE LAND TO
43 PUBLIC USE OR GRANT PUBLIC OR PRIVATE EASEMENTS AND MAKE OR VACATE PLATS AND
44 ADJUST BOUNDARIES.

1 9. ENTER INTO A LEASE FOR ANY PURPOSE AS LESSOR OR LESSEE, INCLUDING
2 A LEASE OR OTHER ARRANGEMENT FOR EXPLORATION AND REMOVAL OF NATURAL
3 RESOURCES, WITH OR WITHOUT THE OPTION TO PURCHASE OR RENEW, FOR A PERIOD
4 WITHIN OR EXTENDING BEYOND THE DURATION OF THE TRUST.

5 10. GRANT AN OPTION INVOLVING A SALE, LEASE OR OTHER DISPOSITION OF
6 TRUST PROPERTY OR ACQUIRE AN OPTION FOR THE ACQUISITION OF PROPERTY,
7 INCLUDING AN OPTION EXERCISABLE BEYOND THE DURATION OF THE TRUST, AND
8 EXERCISE AN OPTION SO ACQUIRED.

9 11. INSURE THE PROPERTY OF THE TRUST AGAINST DAMAGE OR LOSS AND INSURE
10 THE TRUSTEE, THE TRUSTEE'S AGENTS AND BENEFICIARIES AGAINST LIABILITY ARISING
11 FROM THE ADMINISTRATION OF THE TRUST.

12 12. ABANDON OR DECLINE TO ADMINISTER PROPERTY OF NO VALUE OR OF
13 INSUFFICIENT VALUE TO JUSTIFY ITS COLLECTION OR CONTINUED ADMINISTRATION.

14 13. WITH RESPECT TO POSSIBLE LIABILITY FOR VIOLATION OF ENVIRONMENTAL
15 LAW:

16 (a) INSPECT OR INVESTIGATE PROPERTY THE TRUSTEE HOLDS OR HAS BEEN
17 ASKED TO HOLD, OR PROPERTY OWNED OR OPERATED BY AN ORGANIZATION IN WHICH THE
18 TRUSTEE HOLDS OR HAS BEEN ASKED TO HOLD AN INTEREST, FOR THE PURPOSE OF
19 DETERMINING THE APPLICATION OF ENVIRONMENTAL LAW WITH RESPECT TO THE
20 PROPERTY.

21 (b) TAKE ACTION TO PREVENT, ABATE OR OTHERWISE REMEDY ANY ACTUAL OR
22 POTENTIAL VIOLATION OF ANY ENVIRONMENTAL LAW AFFECTING PROPERTY HELD DIRECTLY
23 OR INDIRECTLY BY THE TRUSTEE, WHETHER TAKEN BEFORE OR AFTER THE ASSERTION OF
24 A CLAIM OR THE INITIATION OF GOVERNMENTAL ENFORCEMENT.

25 (c) DECLINE TO ACCEPT PROPERTY INTO TRUST OR DISCLAIM ANY POWER WITH
26 RESPECT TO PROPERTY THAT IS OR MAY BE BURDENED WITH LIABILITY FOR VIOLATION
27 OF ENVIRONMENTAL LAW.

28 (d) COMPROMISE CLAIMS AGAINST THE TRUST THAT MAY BE ASSERTED FOR AN
29 ALLEGED VIOLATION OF ENVIRONMENTAL LAW.

30 (e) PAY THE EXPENSE OF ANY INSPECTION, REVIEW, ABATEMENT OR REMEDIAL
31 ACTION TO COMPLY WITH ENVIRONMENTAL LAW.

32 14. PAY OR CONTEST ANY CLAIM, SETTLE A CLAIM BY OR AGAINST THE TRUST
33 AND RELEASE IN WHOLE OR IN PART A CLAIM BELONGING TO THE TRUST.

34 15. PAY TAXES, ASSESSMENTS, COMPENSATION OF THE TRUSTEE AND OF
35 EMPLOYEES AND AGENTS OF THE TRUST AND OTHER EXPENSES INCURRED IN THE
36 ADMINISTRATION OF THE TRUST.

37 16. EXERCISE ELECTIONS WITH RESPECT TO FEDERAL, STATE AND LOCAL TAXES.

38 17. SELECT A MODE OF PAYMENT UNDER ANY EMPLOYEE BENEFIT OR RETIREMENT
39 PLAN, ANNUITY OR LIFE INSURANCE PAYABLE TO THE TRUSTEE, EXERCISE RIGHTS
40 THEREUNDER, INCLUDING EXERCISE OF THE RIGHT TO INDEMNIFICATION FOR EXPENSES
41 AND AGAINST LIABILITIES, AND TAKE APPROPRIATE ACTION TO COLLECT THE PROCEEDS.

42 18. MAKE LOANS OUT OF TRUST PROPERTY, INCLUDING LOANS TO A BENEFICIARY
43 ON TERMS AND CONDITIONS THE TRUSTEE CONSIDERS TO BE FAIR AND REASONABLE UNDER
44 THE CIRCUMSTANCES, AND THE TRUSTEE HAS A LIEN ON FUTURE DISTRIBUTIONS FOR
45 REPAYMENT OF THOSE LOANS.

1 19. PLEDGE TRUST PROPERTY TO GUARANTEE LOANS MADE BY OTHERS TO THE
2 BENEFICIARY.

3 20. APPOINT A TRUSTEE TO ACT IN ANOTHER JURISDICTION WITH RESPECT TO
4 TRUST PROPERTY LOCATED IN THE OTHER JURISDICTION, CONFER ON THE APPOINTED
5 TRUSTEE ALL OF THE POWERS AND DUTIES OF THE APPOINTING TRUSTEE, REQUIRE THAT
6 THE APPOINTED TRUSTEE FURNISH SECURITY AND REMOVE ANY TRUSTEE SO APPOINTED.

7 21. PAY AN AMOUNT DISTRIBUTABLE TO A BENEFICIARY WHO IS UNDER A LEGAL
8 DISABILITY OR WHO THE TRUSTEE REASONABLY BELIEVES IS INCAPACITATED, BY PAYING
9 IT DIRECTLY TO THE BENEFICIARY OR APPLYING IT FOR THE BENEFICIARY'S BENEFIT,
10 OR BY EITHER:

11 (a) PAYING IT TO THE BENEFICIARY'S CONSERVATOR OR, IF THE BENEFICIARY
12 DOES NOT HAVE A CONSERVATOR, THE BENEFICIARY'S GUARDIAN.

13 (b) PAYING IT TO THE BENEFICIARY'S CUSTODIAN UNDER THE UNIFORM
14 TRANSFERS TO MINORS ACT OR CUSTODIAL TRUSTEE UNDER THE UNIFORM CUSTODIAL
15 TRUST ACT, AND, FOR THAT PURPOSE, CREATING A CUSTODIANSHIP OR CUSTODIAL
16 TRUST.

17 (c) IF THE TRUSTEE DOES NOT KNOW OF A CONSERVATOR, GUARDIAN, CUSTODIAN
18 OR CUSTODIAL TRUSTEE, PAYING IT TO AN ADULT RELATIVE OR OTHER PERSON HAVING
19 LEGAL OR PHYSICAL CARE OR CUSTODY OF THE BENEFICIARY TO BE EXPENDED ON THE
20 BENEFICIARY'S BEHALF.

21 (d) MANAGING IT AS A SEPARATE FUND ON THE BENEFICIARY'S BEHALF,
22 SUBJECT TO THE BENEFICIARY'S CONTINUING RIGHT TO WITHDRAW THE DISTRIBUTION.

23 22. ON DISTRIBUTION OF TRUST PROPERTY OR THE DIVISION OR TERMINATION
24 OF A TRUST, MAKE DISTRIBUTIONS IN DIVIDED OR UNDIVIDED INTERESTS, ALLOCATE
25 PARTICULAR ASSETS, INCLUDING COMMUNITY PROPERTY, IN PROPORTIONATE OR
26 DISPROPORTIONATE SHARES, VALUE THE TRUST PROPERTY FOR THOSE PURPOSES AND
27 ADJUST FOR RESULTING DIFFERENCES IN VALUATION. IN MAKING A DIVISION OR
28 DISTRIBUTION OF COMMUNITY PROPERTY HELD IN TRUST, THE TRUSTEE MAY CONSIDER
29 COMMUNITY PROPERTY HELD OUTSIDE THE TRUST SO THAT THE DIVISION OF COMMUNITY
30 PROPERTY HELD IN THE TRUST AND OUTSIDE OF THE TRUST IS MADE BASED ON EQUAL
31 VALUE BUT NOT NECESSARILY PROPORTIONATELY.

32 23. RESOLVE A DISPUTE CONCERNING THE INTERPRETATION OF THE TRUST OR ITS
33 ADMINISTRATION BY MEDIATION, ARBITRATION OR OTHER PROCEDURE FOR ALTERNATIVE
34 DISPUTE RESOLUTION.

35 24. PROSECUTE OR DEFEND AN ACTION, CLAIM OR JUDICIAL PROCEEDING IN ANY
36 JURISDICTION TO PROTECT TRUST PROPERTY AND THE TRUSTEE IN THE PERFORMANCE OF
37 THE TRUSTEE'S DUTIES.

38 25. SIGN AND DELIVER CONTRACTS AND OTHER INSTRUMENTS THAT ARE USEFUL
39 TO ACHIEVE OR FACILITATE THE EXERCISE OF THE TRUSTEE'S POWERS.

40 26. ON TERMINATION OF THE TRUST, EXERCISE THE POWERS APPROPRIATE TO
41 WIND UP THE ADMINISTRATION OF THE TRUST AND DISTRIBUTE THE TRUST PROPERTY TO
42 THE PERSONS ENTITLED TO IT.

43 14-10817. Distribution on termination

44 A. ON TERMINATION OR PARTIAL TERMINATION OF A TRUST, THE TRUSTEE MAY
45 SEND TO THE BENEFICIARIES A PROPOSAL FOR DISTRIBUTION. THE RIGHT OF ANY

1 BENEFICIARY TO OBJECT TO THE PROPOSED DISTRIBUTION TERMINATES IF THE
2 BENEFICIARY DOES NOT NOTIFY THE TRUSTEE OF AN OBJECTION WITHIN THIRTY DAYS
3 AFTER THE PROPOSAL WAS SENT BUT ONLY IF THE PROPOSAL INFORMED THE BENEFICIARY
4 OF THE RIGHT TO OBJECT AND OF THE TIME ALLOWED FOR OBJECTION.

5 B. ON THE OCCURRENCE OF AN EVENT TERMINATING OR PARTIALLY TERMINATING
6 A TRUST, THE TRUSTEE, WITHIN A REASONABLE TIME, SHALL DISTRIBUTE THE TRUST
7 PROPERTY TO THE PERSONS ENTITLED TO IT SUBJECT TO THE RIGHT OF THE TRUSTEE
8 TO RETAIN A REASONABLE RESERVE FOR THE PAYMENT OF DEBTS, EXPENSES AND TAXES.

9 C. A RELEASE BY A BENEFICIARY OF A TRUSTEE FROM LIABILITY FOR BREACH
10 OF TRUST IS INVALID TO THE EXTENT:

11 1. IT WAS INDUCED BY IMPROPER CONDUCT OF THE TRUSTEE.

12 2. THE BENEFICIARY, AT THE TIME OF THE RELEASE, DID NOT KNOW OF THE
13 BENEFICIARY'S RIGHTS OR OF THE MATERIAL FACTS RELATING TO THE BREACH.

14 ARTICLE 9. PRUDENT INVESTOR RULE

15 14-10901. Prudent investor rule

16 A. EXCEPT AS PROVIDED IN SUBSECTION B, A TRUSTEE WHO INVESTS AND
17 MANAGES TRUST ASSETS OWES A DUTY TO THE BENEFICIARIES OF THE TRUST TO COMPLY
18 WITH THE PRUDENT INVESTOR RULE REQUIREMENTS OF THIS ARTICLE.

19 B. THE PRUDENT INVESTOR RULE IS A DEFAULT RULE AND MAY BE EXPANDED,
20 RESTRICTED, ELIMINATED OR OTHERWISE ALTERED BY THE PROVISIONS OF A TRUST.

21 C. A TRUSTEE IS NOT LIABLE TO A BENEFICIARY TO THE EXTENT THAT THE
22 TRUSTEE ACTED IN REASONABLE RELIANCE ON THE PROVISIONS OF THE TRUST.

23 14-10902. Standard of care; portfolio strategy; risk and return
24 objectives

25 A. A TRUSTEE SHALL INVEST AND MANAGE TRUST ASSETS AS A PRUDENT
26 INVESTOR WOULD BY CONSIDERING THE PURPOSES, TERMS, DISTRIBUTION REQUIREMENTS
27 AND OTHER CIRCUMSTANCES OF THE TRUST. IN SATISFYING THIS STANDARD THE
28 TRUSTEE SHALL EXERCISE REASONABLE CARE, SKILL AND CAUTION.

29 B. A TRUSTEE'S INVESTMENT AND MANAGEMENT DECISIONS RESPECTING
30 INDIVIDUAL ASSETS SHALL NOT BE EVALUATED IN ISOLATION BUT IN THE CONTEXT OF
31 THE TRUST PORTFOLIO AS A WHOLE AND AS A PART OF AN OVERALL INVESTMENT
32 STRATEGY HAVING RISK AND RETURN OBJECTIVES REASONABLY SUITED TO THE TRUST.

33 C. AMONG CIRCUMSTANCES THAT A TRUSTEE SHALL CONSIDER IN INVESTING AND
34 MANAGING TRUST ASSETS ARE ANY OF THE FOLLOWING THAT ARE RELEVANT TO THE TRUST
35 OR ITS BENEFICIARIES:

36 1. GENERAL ECONOMIC CONDITIONS.

37 2. THE POSSIBLE EFFECT OF INFLATION OR DEFLATION.

38 3. THE EXPECTED TAX CONSEQUENCES OF INVESTMENT DECISIONS OR
39 STRATEGIES.

40 4. THE ROLE THAT EACH INVESTMENT OR COURSE OF ACTION PLAYS WITHIN THE
41 OVERALL TRUST PORTFOLIO THAT MAY INCLUDE FINANCIAL ASSETS, INTERESTS IN
42 CLOSELY HELD ENTERPRISES, TANGIBLE AND INTANGIBLE PERSONAL PROPERTY AND REAL
43 PROPERTY.

44 5. THE EXPECTED TOTAL RETURN FROM INCOME AND THE APPRECIATION OF
45 CAPITAL.

6. OTHER RESOURCES OF THE BENEFICIARIES.

7. NEEDS FOR LIQUIDITY, REGULARITY OF INCOME AND PRESERVATION OR APPRECIATION OF CAPITAL.

8. AN ASSET'S SPECIAL RELATIONSHIP OR SPECIAL VALUE, IF ANY, TO THE PURPOSES OF THE TRUST OR TO ONE OR MORE OF THE BENEFICIARIES.

D. A TRUSTEE SHALL MAKE A REASONABLE EFFORT TO VERIFY FACTS RELEVANT TO THE INVESTMENT AND MANAGEMENT OF TRUST ASSETS.

E. A TRUSTEE MAY INVEST IN ANY KIND OF PROPERTY OR TYPE OF INVESTMENT CONSISTENT WITH THE STANDARDS OF THIS ARTICLE.

14-10903. Diversification

A TRUSTEE SHALL DIVERSIFY THE INVESTMENTS OF THE TRUST UNLESS THE TRUSTEE REASONABLY DETERMINES THAT, BECAUSE OF SPECIAL CIRCUMSTANCES, THE PURPOSES OF THE TRUST ARE BETTER SERVED WITHOUT DIVERSIFYING.

14-10904. Duties at inception of trusteeship

WITHIN A REASONABLE TIME AFTER ACCEPTING A TRUSTEESHIP OR RECEIVING TRUST ASSETS, A TRUSTEE SHALL REVIEW THE TRUST ASSETS AND MAKE AND IMPLEMENT DECISIONS CONCERNING THE RETENTION AND DISPOSITION OF ASSETS IN ORDER TO BRING THE TRUST PORTFOLIO INTO COMPLIANCE WITH THE PURPOSES, TERMS, DISTRIBUTION REQUIREMENTS AND OTHER CIRCUMSTANCES OF THE TRUST AND WITH THE REQUIREMENTS OF THIS ARTICLE.

14-10905. Reviewing compliance

COMPLIANCE WITH THIS ARTICLE IS DETERMINED IN LIGHT OF THE FACTS AND CIRCUMSTANCES EXISTING AT THE TIME OF A TRUSTEE'S DECISION OR ACTION AND NOT BY HINDSIGHT.

14-10906. Prudent investor rule; language to invoke standard

THE FOLLOWING TERMS OR COMPARABLE LANGUAGE IN THE PROVISIONS OF A TRUST, UNLESS OTHERWISE LIMITED OR MODIFIED, AUTHORIZES ANY INVESTMENT OR STRATEGY PERMITTED UNDER THIS ARTICLE:

1. INVESTMENTS PERMISSIBLE BY LAW FOR INVESTMENT OF TRUST FUNDS.

2. LEGAL INVESTMENTS.

3. AUTHORIZED INVESTMENTS.

4. USING THE JUDGMENT AND CARE UNDER THE CIRCUMSTANCES THEN PREVAILING THAT PERSONS OF PRUDENCE, DISCRETION AND INTELLIGENCE EXERCISE IN THE MANAGEMENT OF THEIR OWN AFFAIRS, NOT IN REGARD TO SPECULATION BUT IN REGARD TO THE PERMANENT DISPOSITION OF THEIR FUNDS, CONSIDERING THE PROBABLE INCOME AS WELL AS THE PROBABLE SAFETY OF THEIR CAPITAL.

5. PRUDENT MAN RULE.

6. PRUDENT TRUSTEE RULE.

7. PRUDENT PERSON RULE.

8. PRUDENT INVESTOR RULE.

14-10907. Application to existing trusts

A. THIS ARTICLE APPLIES TO TRUSTS EXISTING ON AND CREATED AFTER JULY 20, 1996.

B. AS APPLIED TO TRUSTS EXISTING ON JULY 20, 1996, THIS ARTICLE GOVERNS ONLY DECISIONS OR ACTIONS OCCURRING AFTER THAT DATE.

ARTICLE 10. LIABILITY OF TRUSTEES AND
RIGHTS OF PERSONS DEALING WITH TRUSTEE

14-11001. Remedies for breach of trust

A. A VIOLATION BY A TRUSTEE OF A DUTY THE TRUSTEE OWES TO A BENEFICIARY IS A BREACH OF TRUST.

B. EXCEPT AS PROVIDED IN SECTION 14-7404, TO REMEDY A BREACH OF TRUST THAT HAS OCCURRED OR MAY OCCUR, THE COURT MAY:

1. COMPEL THE TRUSTEE TO PERFORM THE TRUSTEE'S DUTIES.

2. ENJOIN THE TRUSTEE FROM COMMITTING A BREACH OF TRUST.

3. COMPEL THE TRUSTEE TO REDRESS A BREACH OF TRUST BY PAYING MONEY, RESTORING PROPERTY OR OTHER MEANS.

4. ORDER A TRUSTEE TO ACCOUNT.

5. APPOINT A SPECIAL FIDUCIARY TO TAKE POSSESSION OF THE TRUST PROPERTY AND ADMINISTER THE TRUST.

6. SUSPEND THE TRUSTEE.

7. REMOVE THE TRUSTEE AS PROVIDED IN SECTION 14-10706.

8. REDUCE OR DENY COMPENSATION TO THE TRUSTEE.

9. SUBJECT TO SECTION 14-10706, VOID AN ACT OF THE TRUSTEE, IMPOSE A LIEN OR A CONSTRUCTIVE TRUST ON TRUST PROPERTY OR TRACE TRUST PROPERTY WRONGFULLY DISPOSED OF AND RECOVER THE PROPERTY OR ITS PROCEEDS.

10. ORDER ANY OTHER APPROPRIATE RELIEF.

14-11002. Damages for breach of trust

A. EXCEPT AS PROVIDED IN SECTION 14-7404, A TRUSTEE WHO COMMITS A BREACH OF TRUST IS LIABLE TO THE BENEFICIARIES AFFECTED FOR THE GREATER OF EITHER:

1. THE AMOUNT REQUIRED TO RESTORE THE VALUE OF THE TRUST PROPERTY AND TRUST DISTRIBUTIONS TO WHAT THEY WOULD HAVE BEEN HAD THE BREACH NOT OCCURRED.

2. THE PROFIT THE TRUSTEE MADE BY REASON OF THE BREACH.

B. EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, IF MORE THAN ONE TRUSTEE IS LIABLE TO THE BENEFICIARIES FOR A BREACH OF TRUST, A TRUSTEE IS ENTITLED TO CONTRIBUTION FROM THE OTHER TRUSTEE OR TRUSTEES. A TRUSTEE IS NOT ENTITLED TO CONTRIBUTION IF THE TRUSTEE WAS SUBSTANTIALLY MORE AT FAULT THAN ANOTHER TRUSTEE OR IF THE TRUSTEE COMMITTED THE BREACH OF TRUST IN BAD FAITH OR WITH RECKLESS INDIFFERENCE TO THE PURPOSES OF THE TRUST OR THE INTERESTS OF THE BENEFICIARIES. A TRUSTEE WHO RECEIVED A BENEFIT FROM THE BREACH OF TRUST IS NOT ENTITLED TO CONTRIBUTION FROM ANOTHER TRUSTEE TO THE EXTENT OF THE BENEFIT RECEIVED.

14-11003. Damages in absence of breach

A. EXCEPT AS PROVIDED IN SECTION 14-7404, A TRUSTEE IS ACCOUNTABLE TO AN AFFECTED BENEFICIARY FOR ANY PROFIT MADE BY THE TRUSTEE ARISING FROM THE ADMINISTRATION OF THE TRUST, EVEN ABSENT A BREACH OF TRUST.

B. ABSENT A BREACH OF TRUST, A TRUSTEE IS NOT LIABLE TO A BENEFICIARY FOR A LOSS OR DEPRECIATION IN THE VALUE OF TRUST PROPERTY OR FOR NOT HAVING MADE A PROFIT.

1 14-11004. Attorney fees and costs

2 IN A JUDICIAL PROCEEDING INVOLVING THE ADMINISTRATION OF A TRUST, THE
3 COURT, AS JUSTICE AND EQUITY MAY REQUIRE, MAY AWARD COSTS AND EXPENSES,
4 INCLUDING REASONABLE ATTORNEY FEES, TO ANY PARTY TO BE PAID BY ANOTHER PARTY
5 OR FROM THE TRUST THAT IS THE SUBJECT OF THE CONTROVERSY.

6 14-11005. Limitation of action against trustee

7 A. A BENEFICIARY MAY NOT COMMENCE A PROCEEDING AGAINST A TRUSTEE FOR
8 BREACH OF TRUST MORE THAN ONE YEAR AFTER THE DATE THE BENEFICIARY OR A
9 REPRESENTATIVE OF THE BENEFICIARY WAS SENT A REPORT THAT ADEQUATELY DISCLOSED
10 THE EXISTENCE OF A POTENTIAL CLAIM FOR BREACH OF TRUST AND INFORMED THE
11 BENEFICIARY OF THE TIME ALLOWED FOR COMMENCING A PROCEEDING.

12 B. A REPORT ADEQUATELY DISCLOSES THE EXISTENCE OF A POTENTIAL CLAIM
13 FOR BREACH OF TRUST IF IT PROVIDES SUFFICIENT INFORMATION SO THAT THE
14 BENEFICIARY OR REPRESENTATIVE KNOWS OF THE POTENTIAL CLAIM OR SHOULD HAVE
15 INQUIRED INTO ITS EXISTENCE.

16 C. IF SUBSECTION A DOES NOT APPLY, A JUDICIAL PROCEEDING BY A
17 BENEFICIARY AGAINST A TRUSTEE FOR BREACH OF TRUST MUST BE COMMENCED WITHIN
18 TWO YEARS AFTER THE FIRST TO OCCUR OF:

- 19 1. THE REMOVAL, RESIGNATION OR DEATH OF THE TRUSTEE.
20 2. THE TERMINATION OF THE BENEFICIARY'S INTEREST IN THE TRUST.
21 3. THE TERMINATION OF THE TRUST.

22 14-11006. Reliance on trust instrument

23 A TRUSTEE WHO ACTS IN REASONABLE RELIANCE ON THE TERMS OF THE TRUST AS
24 EXPRESSED IN THE TRUST INSTRUMENT IS NOT LIABLE TO A BENEFICIARY FOR A BREACH
25 OF TRUST TO THE EXTENT THE BREACH RESULTED FROM THE RELIANCE.

26 14-11007. Event affecting administration or distribution

27 IF THE HAPPENING OF AN EVENT, INCLUDING MARRIAGE, DIVORCE, PERFORMANCE
28 OF EDUCATIONAL REQUIREMENTS OR DEATH, AFFECTS THE ADMINISTRATION OR
29 DISTRIBUTION OF A TRUST, A TRUSTEE WHO HAS EXERCISED REASONABLE CARE TO
30 ASCERTAIN THE HAPPENING OF THE EVENT IS NOT LIABLE FOR A LOSS RESULTING FROM
31 THE TRUSTEE'S LACK OF KNOWLEDGE.

32 14-11008. Exculpation of trustee

33 A. A TERM OF A TRUST RELIEVING A TRUSTEE OF LIABILITY FOR BREACH OF
34 TRUST IS UNENFORCEABLE TO THE EXTENT THAT IT EITHER:

35 1. RELIEVES THE TRUSTEE OF LIABILITY FOR BREACH OF TRUST COMMITTED IN
36 BAD FAITH OR WITH RECKLESS INDIFFERENCE TO THE PURPOSES OF THE TRUST OR THE
37 INTERESTS OF THE BENEFICIARIES.

38 2. WAS INSERTED AS THE RESULT OF AN ABUSE BY THE TRUSTEE OF A
39 FIDUCIARY OR CONFIDENTIAL RELATIONSHIP TO THE SETTLOR.

40 B. AN EXCULPATORY TERM DRAFTED OR CAUSED TO BE DRAFTED BY THE TRUSTEE
41 IS INVALID AS AN ABUSE OF A FIDUCIARY OR CONFIDENTIAL RELATIONSHIP UNLESS THE
42 TRUSTEE PROVES THAT THE EXCULPATORY TERM IS FAIR UNDER THE CIRCUMSTANCES AND
43 THAT ITS EXISTENCE AND CONTENTS WERE ADEQUATELY COMMUNICATED TO THE SETTLOR.

14-11009. Beneficiary's consent, release or ratification

A TRUSTEE IS NOT LIABLE TO A BENEFICIARY FOR BREACH OF TRUST IF THE BENEFICIARY CONSENTED TO THE CONDUCT CONSTITUTING THE BREACH, RELEASED THE TRUSTEE FROM LIABILITY FOR THE BREACH OR RATIFIED THE TRANSACTION CONSTITUTING THE BREACH, UNLESS EITHER:

1. THE CONSENT, RELEASE OR RATIFICATION OF THE BENEFICIARY WAS INDUCED BY IMPROPER CONDUCT OF THE TRUSTEE.

2. AT THE TIME OF THE CONSENT, RELEASE OR RATIFICATION, THE BENEFICIARY DID NOT KNOW OF THE BENEFICIARY'S RIGHTS OR OF THE MATERIAL FACTS RELATING TO THE BREACH.

14-11010. Limitation on personal liability of trustee

A. EXCEPT AS OTHERWISE PROVIDED IN THE CONTRACT, A TRUSTEE IS NOT PERSONALLY LIABLE ON A CONTRACT PROPERLY ENTERED INTO IN THE TRUSTEE'S FIDUCIARY CAPACITY IN THE COURSE OF ADMINISTERING THE TRUST IF THE TRUSTEE IN THE CONTRACT DISCLOSED THE FIDUCIARY CAPACITY.

B. A TRUSTEE IS PERSONALLY LIABLE FOR TORTS COMMITTED IN THE COURSE OF ADMINISTERING A TRUST OR FOR OBLIGATIONS ARISING FROM OWNERSHIP OR CONTROL OF TRUST PROPERTY, INCLUDING LIABILITY FOR VIOLATION OF ENVIRONMENTAL LAW, ONLY IF THE TRUSTEE IS PERSONALLY AT FAULT.

C. A CLAIM BASED ON A CONTRACT ENTERED INTO BY A TRUSTEE IN THE TRUSTEE'S FIDUCIARY CAPACITY, ON AN OBLIGATION ARISING FROM OWNERSHIP OR CONTROL OF TRUST PROPERTY OR ON A TORT COMMITTED IN THE COURSE OF ADMINISTERING A TRUST MAY BE ASSERTED IN A JUDICIAL PROCEEDING AGAINST THE TRUSTEE IN THE TRUSTEE'S FIDUCIARY CAPACITY, WHETHER OR NOT THE TRUSTEE IS PERSONALLY LIABLE FOR THE CLAIM.

14-11011. Interest as general partner

A. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION C OR UNLESS PERSONAL LIABILITY IS IMPOSED IN THE CONTRACT, A TRUSTEE WHO HOLDS AN INTEREST AS A GENERAL PARTNER IN A GENERAL OR LIMITED PARTNERSHIP IS NOT PERSONALLY LIABLE ON A CONTRACT ENTERED INTO BY THE PARTNERSHIP AFTER THE TRUST'S ACQUISITION OF THE INTEREST IF THE FIDUCIARY CAPACITY WAS DISCLOSED IN THE CONTRACT OR IN A STATEMENT PREVIOUSLY FILED PURSUANT TO THE UNIFORM PARTNERSHIP ACT OR THE UNIFORM LIMITED PARTNERSHIP ACT.

B. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION C, A TRUSTEE WHO HOLDS AN INTEREST AS A GENERAL PARTNER IS NOT PERSONALLY LIABLE FOR TORTS COMMITTED BY THE PARTNERSHIP OR FOR OBLIGATIONS ARISING FROM OWNERSHIP OR CONTROL OF THE INTEREST UNLESS THE TRUSTEE IS PERSONALLY AT FAULT.

C. THE IMMUNITY PROVIDED BY THIS SECTION DOES NOT APPLY IF AN INTEREST IN THE PARTNERSHIP IS HELD BY THE TRUSTEE IN A CAPACITY OTHER THAN THAT OF TRUSTEE OR IS HELD BY THE TRUSTEE'S SPOUSE OR ONE OR MORE OF THE TRUSTEE'S DESCENDANTS, SIBLINGS OR PARENTS OR THE SPOUSE OF ANY OF THEM.

D. IF THE TRUSTEE OF A REVOCABLE TRUST HOLDS AN INTEREST AS A GENERAL PARTNER, THE SETTLOR IS PERSONALLY LIABLE FOR CONTRACTS AND OTHER OBLIGATIONS OF THE PARTNERSHIP AS IF THE SETTLOR WERE A GENERAL PARTNER.

1 14-11012. Protection of person dealing with trustee

2 A. A PERSON OTHER THAN A BENEFICIARY WHO IN GOOD FAITH ASSISTS A
3 TRUSTEE OR WHO IN GOOD FAITH AND FOR VALUE DEALS WITH A TRUSTEE, WITHOUT
4 KNOWLEDGE THAT THE TRUSTEE IS EXCEEDING OR IMPROPERLY EXERCISING THE
5 TRUSTEE'S POWERS, IS PROTECTED FROM LIABILITY AS IF THE TRUSTEE PROPERLY
6 EXERCISED THE POWER.

7 B. A PERSON OTHER THAN A BENEFICIARY WHO IN GOOD FAITH DEALS WITH A
8 TRUSTEE IS NOT REQUIRED TO INQUIRE INTO THE EXTENT OF THE TRUSTEE'S POWERS
9 OR THE PROPRIETY OF THEIR EXERCISE.

10 C. A PERSON WHO IN GOOD FAITH DELIVERS ASSETS TO A TRUSTEE NEED NOT
11 ENSURE THEIR PROPER APPLICATION.

12 D. A PERSON OTHER THAN A BENEFICIARY WHO IN GOOD FAITH ASSISTS A
13 FORMER TRUSTEE OR WHO IN GOOD FAITH AND FOR VALUE DEALS WITH A FORMER
14 TRUSTEE, WITHOUT KNOWLEDGE THAT THE TRUSTEESHIP HAS TERMINATED, IS PROTECTED
15 FROM LIABILITY AS IF THE FORMER TRUSTEE WERE STILL A TRUSTEE.

16 E. COMPARABLE PROTECTIVE PROVISIONS OF OTHER LAWS RELATING TO
17 COMMERCIAL TRANSACTIONS OR TRANSFER OF SECURITIES BY FIDUCIARIES PREVAIL OVER
18 THE PROTECTION PROVIDED BY THIS SECTION.

19 14-11013. Certification of trust

20 A. INSTEAD OF FURNISHING A COPY OF THE TRUST INSTRUMENT TO A PERSON
21 OTHER THAN A BENEFICIARY, THE TRUSTEE MAY FURNISH TO THE PERSON A
22 CERTIFICATION OF TRUST CONTAINING THE FOLLOWING INFORMATION:

23 1. THAT THE TRUST EXISTS AND THE DATE THE TRUST INSTRUMENT WAS
24 EXECUTED.

25 2. THE IDENTITY OF THE SETTLOR.

26 3. THE IDENTITY AND ADDRESS OF THE CURRENTLY ACTING TRUSTEE.

27 4. THE POWERS OF THE TRUSTEE.

28 5. THE REVOCABILITY OR IRREVOCABILITY OF THE TRUST AND THE IDENTITY
29 OF ANY PERSON HOLDING A POWER TO REVOKE THE TRUST.

30 6. THE AUTHORITY OF COTRUSTEES TO SIGN OR OTHERWISE AUTHENTICATE AND
31 WHETHER ALL OR LESS THAN ALL ARE REQUIRED IN ORDER TO EXERCISE POWERS OF THE
32 TRUSTEE.

33 7. THE TRUST'S TAXPAYER IDENTIFICATION NUMBER.

34 8. THE MANNER OF TAKING TITLE TO TRUST PROPERTY.

35 B. A CERTIFICATION OF TRUST MAY BE SIGNED OR OTHERWISE AUTHENTICATED
36 BY ANY TRUSTEE.

37 C. A CERTIFICATION OF TRUST MUST STATE THAT THE TRUST HAS NOT BEEN
38 REVOKED, MODIFIED OR AMENDED IN ANY MANNER THAT WOULD CAUSE THE
39 REPRESENTATIONS CONTAINED IN THE CERTIFICATION OF TRUST TO BE INCORRECT.

40 D. A CERTIFICATION OF TRUST NEED NOT CONTAIN THE DISPOSITIVE TERMS OF
41 A TRUST.

42 E. A RECIPIENT OF A CERTIFICATION OF TRUST MAY REQUIRE THE TRUSTEE TO
43 FURNISH COPIES OF THOSE EXCERPTS FROM THE ORIGINAL TRUST INSTRUMENT AND LATER
44 AMENDMENTS THAT DESIGNATE THE TRUSTEE AND CONFER ON THE TRUSTEE THE POWER TO
45 ACT IN THE PENDING TRANSACTION.

1 F. A PERSON WHO ACTS IN RELIANCE ON A CERTIFICATION OF TRUST WITHOUT
2 KNOWLEDGE THAT THE REPRESENTATIONS CONTAINED IN THE CERTIFICATION ARE
3 INCORRECT IS NOT LIABLE TO ANY PERSON FOR SO ACTING AND MAY ASSUME WITHOUT
4 INQUIRY THE EXISTENCE OF THE FACTS CONTAINED IN THE CERTIFICATION. KNOWLEDGE
5 OF THE TERMS OF THE TRUST MAY NOT BE INFERRED SOLELY FROM THE FACT THAT A
6 COPY OF ALL OR PART OF THE TRUST INSTRUMENT IS HELD BY THE PERSON RELYING ON
7 THE CERTIFICATION.

8 G. A PERSON WHO IN GOOD FAITH ENTERS INTO A TRANSACTION IN RELIANCE
9 ON A CERTIFICATION OF TRUST MAY ENFORCE THE TRANSACTION AGAINST THE TRUST
10 PROPERTY AS IF THE REPRESENTATIONS CONTAINED IN THE CERTIFICATION WERE
11 CORRECT.

12 H. A PERSON MAKING A DEMAND FOR THE TRUST INSTRUMENT IN ADDITION TO
13 A CERTIFICATION OF TRUST OR EXCERPTS IS LIABLE FOR DAMAGES IF THE COURT
14 DETERMINES THAT THE PERSON DID NOT ACT IN GOOD FAITH IN DEMANDING THE TRUST
15 INSTRUMENT.

16 I. THIS SECTION DOES NOT LIMIT THE RIGHT OF A PERSON TO OBTAIN A COPY
17 OF THE TRUST INSTRUMENT IN A JUDICIAL PROCEEDING CONCERNING THE TRUST.

18 ARTICLE 11. MISCELLANEOUS PROVISIONS

19 14-11201. Uniformity of application and construction

20 IN APPLYING AND CONSTRUING THIS UNIFORM CODE, CONSIDERATION MUST BE
21 GIVEN:

22 1. TO THE NEED TO PROMOTE UNIFORMITY OF THE LAW WITH RESPECT TO ITS
23 SUBJECT MATTER AMONG STATES THAT ENACT IT.

24 2. TO THE COMMENTS ADOPTED BY THE NATIONAL CONFERENCE OF COMMISSIONERS
25 ON UNIFORM STATE LAWS AND THE EXECUTIVE COUNCIL OF THE PROBATE AND TRUST LAW
26 SECTION OF THE STATE BAR OF ARIZONA.

27 14-11202. Electronic records and signatures

28 THE PROVISIONS OF THIS CHAPTER GOVERNING THE LEGAL EFFECT, VALIDITY OR
29 ENFORCEABILITY OF ELECTRONIC RECORDS OR ELECTRONIC SIGNATURES, AND OF
30 CONTRACTS FORMED OR PERFORMED WITH THE USE OF SUCH RECORDS OR SIGNATURES,
31 CONFORM TO THE REQUIREMENTS OF SECTION 102 OF THE ELECTRONIC SIGNATURES IN
32 GLOBAL AND NATIONAL COMMERCE ACT (15 UNITED STATES CODE SECTION 7002) AND
33 SUPERSEDE, MODIFY AND LIMIT THE REQUIREMENTS OF THE ELECTRONIC SIGNATURES IN
34 GLOBAL AND NATIONAL COMMERCE ACT.

35 14-11203. Severability clause

36 IF ANY PROVISION OF THIS CHAPTER OR ITS APPLICATION TO ANY PERSON OR
37 CIRCUMSTANCES IS HELD INVALID, THE INVALIDITY DOES NOT AFFECT OTHER
38 PROVISIONS OR APPLICATIONS OF THIS CHAPTER THAT CAN BE GIVEN EFFECT WITHOUT
39 THE INVALID PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS
40 CHAPTER ARE SEVERABLE.

1 Sec. 14. Section 46-456, Arizona Revised Statutes, is amended to read:
2 46-456. Duty to an incapacitated or vulnerable adult; financial
3 exploitation; civil and criminal penalties;
4 exceptions; definitions

5 A. A person who is in a position of trust and confidence to an
6 incapacitated or vulnerable adult shall act for the benefit of that person
7 to the same extent as a trustee pursuant to title 14, chapter 7, ~~article 3~~.

8 B. A person who is in a position of trust and confidence and who by
9 intimidation or deception knowingly takes control, title, use or management
10 of an incapacitated or vulnerable adult's asset or property with the intent
11 to permanently deprive that person of the asset or property is guilty of
12 theft as provided in section 13-1802.

13 C. A person who violates subsection A or B of this section is subject
14 to damages in a civil action brought by or on behalf of an incapacitated or
15 vulnerable adult that equal up to three times the amount of the monetary
16 damages.

17 D. A person who violates subsection A or B of this section forfeits
18 all benefits with respect to the estate of the deceased, incapacitated or
19 vulnerable adult, including an intestate share, an elective share, an omitted
20 spouse's share, an omitted child's share, a homestead allowance, an exempt
21 property allowance and a family allowance. If the incapacitated or
22 vulnerable adult died intestate, the decedent's intestate estate passes as
23 if the person who committed the violation disclaimed that person's intestate
24 share.

25 E. The provisions of section 46-455, subsections D, E, F, G, I, J, M
26 and N also apply to civil violations of this section.

27 F. Subsections A, C, D and E of this section do not apply to an agent
28 that is any of the following:

29 1. A bank, financial institution or escrow agent licensed or certified
30 pursuant to title 6.

31 2. A securities dealer or salesman registered pursuant to title 44,
32 chapter 12, article 9.

33 3. An insurer, including a title insurer, authorized and regulated
34 pursuant to title 20.

35 G. For the purposes of this section:

36 1. "Deception" means that a person deceives an incapacitated or
37 vulnerable adult by knowingly doing any of the following:

38 (a) Creating or confirming a false impression in an incapacitated or
39 vulnerable adult's mind.

40 (b) Failing to correct a false impression that the person is
41 responsible for creating or confirming in an incapacitated or vulnerable
42 adult's mind.

43 (c) Making a promise to an incapacitated or vulnerable adult that the
44 person does not intend to perform or that the person knows will not or cannot

1 be performed. A person's failure to perform a promise is not by itself
2 sufficient proof that the person did not intend to perform the promise.

3 (d) Misrepresenting or concealing a material fact that relates to the
4 terms of a contract or an agreement that the person enters into with the
5 incapacitated or vulnerable adult or that relates to the existing or
6 preexisting condition of any of the property involved in a contract or an
7 agreement.

8 (e) Using any material misrepresentation, false pretense or false
9 promise to induce, encourage or solicit an incapacitated or vulnerable adult
10 to enter into a contract or an agreement.

11 2. "Intimidation" includes threatening to deprive an incapacitated or
12 vulnerable adult of food, nutrition, shelter or necessary medication or
13 medical treatment.

14 3. "Position of trust and confidence" means that a person is any of
15 the following:

16 (a) One who has assumed a duty to provide care to the incapacitated
17 or vulnerable adult.

18 (b) A joint tenant or a tenant in common with an incapacitated or
19 vulnerable adult.

20 (c) One who is in a fiduciary relationship with an incapacitated or
21 vulnerable adult including a de facto guardian or de facto conservator.

22 Sec. 15. Application to existing relationships

23 A. Except as otherwise provided in this act, beginning on January 1,
24 2004:

25 1. This act applies to all trusts created before, on or after January
26 1, 2004.

27 2. This act applies to all judicial proceedings concerning trusts
28 commenced on or after January 1, 2004.

29 3. This act applies to judicial proceedings concerning trusts
30 commenced before January 1, 2004 unless the court finds that application of
31 a particular provision of this act would substantially interfere with the
32 effective conduct of the judicial proceedings or prejudice the rights of the
33 parties, in which case the particular provision of this act does not apply
34 and the superseded law applies.

35 4. Any rule of construction or presumption provided in this act
36 applies to trust instruments executed before January 1, 2004, unless there
37 is a clear indication of a contrary intent in the terms of the trust.

38 5. An act done before January 1, 2004, is not affected by this act.

39 B. If a right is acquired, extinguished or barred on the expiration
40 of a prescribed period that has commenced to run under any other statute
41 before January 1, 2004, that statute continues to apply to the right even if
42 it has been repealed or superseded.

1 C. For all irrevocable trusts in existence before January 1, 2004, if
2 the notice required by section 14-10813, subsection B, paragraph 3, Arizona
3 Revised Statutes, has not previously been given, it shall be given within
4 sixty days after January 1, 2004.

5 Sec. 16. Delayed effective date

6 This act is effective from and after December 31, 2003.

APPROVED BY THE GOVERNOR MAY 12, 2003.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 13, 2003.

Passed the House April 15, 20 03

by the following vote: 58 Ayes,

0 Nays, 2 Not Voting

Jake Flake
Speaker of the House
Norman L. Moore
Chief Clerk of the House

Passed the Senate March 12, 20 03

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

Klu Bluneth
President of the Senate
Charmine Billington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

 day of , 20 ,

at o'clock M.

Secretary to the Governor

Approved this day of

 , 20 ,

at o'clock M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this day of , 20 ,

at o'clock M.

Secretary of State

S.B. 1351

SENATE CONCURS IN HOUSE AMENDMENTS
AND FINAL PASSAGE

Passed the Senate May 6, 2003

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting

Klu Bennett
President of the Senate
Charmine Bellin
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

6 day of May, 2003

at 3:11 o'clock P M.

Sandra Stang
Secretary to the Governor

Approved this 12 day of

May, 2003,

at 9:15 o'clock A. M.

Jan. 15
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 13 day of May, 2003,

at 4:03 o'clock P M.

James H. Brewer
Secretary of State

S.B. 1351